

9. The defendants, directly or indirectly, made use of the means and instrumentalities of interstate commerce, and of the mails, in connection with the acts, practices, and courses of business alleged in this complaint.

10. Plaintiff Commission brings this action pursuant to authority conferred on it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. §§ 78u(d)].

11. Certain of the defendants reside in the District of Utah and certain of the acts and practices alleged in this complaint occurred in the District of Utah.

THE DEFENDANTS

12. **PanWorld Minerals International, Inc.** (PanWorld) is a Nevada corporation with its principal place of business in Salt Lake City, Utah. PanWorld's common stock at all relevant times was publicly traded.

13. **Robert G. Weeks**, age 55, (Robert Weeks) is a resident of Salt Lake City, Utah. He is the president and a director of PanWorld. He directed and controlled the activities of PanWorld described in this complaint.

14. **David A. Hesterman** (Hesterman), age 40, is a resident of Salt Lake City, Utah. Although publicly described as a consultant to PanWorld, he is in fact an undisclosed control person of the

company. Together with Robert Weeks and Ken Weeks, he directed and controlled the activities of PanWorld described in this complaint. In 1984, he was convicted of criminal violations of the anti-fraud provisions of the Exchange Act.

15. **Kenneth L. Weeks** (Ken Weeks), age 41, is a resident of Salt Lake City, Utah. He is the brother of Robert Weeks and acts as a consultant to PanWorld. Together with Robert Weeks and Hesterman, he directed and controlled the activities of PanWorld described in this complaint.

16. **L.K. Management Co., Inc.** (L.K. Management) is a Nevada corporation with its principal place of business in Los Angeles, California. L.K. Management employed persons to solicit investments from the public using fraudulent scripts and high pressure sales tactics. It is not registered with the Commission as a broker or dealer.

17. **Larry Krasny** (Krasny), age 63, is a resident of North Hills, California. Krasny is the sole shareholder and director of L.K. Management, and directed and controlled its activities described in this complaint.

18. **Puritan Communications, Inc.** (Puritan) is a Delaware corporation with its principal place of business in New York City, New York. Puritan employed persons to solicit investments from

the public in return for PanWorld stock. It is not registered with the Commission as a broker or dealer.

19. **Joseph Fabiilli** (Fabiilli), age 34, lives in Middle Town, New York. He is the sole shareholder and chief operating officer of Puritan. He directed and controlled the activities of Puritan described in this complaint.

20. **Randall Gilbert** (Gilbert), age 37, lives in Evans, Georgia and is a real estate developer.

21. **Jerome Wenger** (Wenger), age 51, lives in Bethesda, Maryland. Wenger hosts *The Next SuperStock* radio show, which is broadcast nationally, and publishes *The Next SuperStock* newsletter.

22. **Rita Hilsenrath Wenger** (Rita Wenger) was the wife of Jerome Wenger and lived in Burtonsville, Maryland during the times relevant to this action. She received PanWorld stock from her husband and promptly sold it. She is not alleged to have engaged in any violations of the federal securities laws, but holds funds that represent fruits of violations committed by defendant Wenger as alleged in this complaint.

23. **Canyon Corporation** (Canyon) is a Bahamian entity, controlled by Robert Weeks and Hesterman. It is not alleged to have engaged in any violations of the federal securities laws, but

holds funds that represent fruits of illegal acts committed by defendants Robert Weeks and Hesterman.

FACTS

Background - Formation of PanWorld

24. In May 1989, Hesterman incorporated PanWorld's predecessor, PanWorld Minerals, Inc. (PMI) as a private Utah corporation. Its shareholders were Robert Weeks and Hesterman's father. During 1989, PMI acquired three mining properties, Cerro Blanco, Pabelon, and Salar de Peidra Parada (Salar), located in Chile in exchange for 2.5 million shares of preferred stock in the company.

25. In December 1989, PMI merged with Ridgtop Resources, Inc., a public company which had stock registered with the Commission. The name of the merged public company was changed to PanWorld Minerals International, Inc.

26. Pursuant to the merger agreement, Robert Weeks received 12,026,315 shares of restricted stock and Hesterman's father received 11,101,213 shares of restricted stock, which were controlled by Hesterman. As part of the merger, PanWorld received PMI's three mining properties in Chile.

27. As an undisclosed part of the merger, Robert Weeks and Hesterman also received approximately 1.3 million shares of the approximately 1.8 million free-trading shares of Ridgtop that were outstanding before the merger.

Periodic Reports filed with the Commission

28. PanWorld became subject to the periodic reporting requirements of Section 15(d) of the Exchange Act and Rules 15d-1 and 15d-13 in December 1989 as a result of the merger with Ridg-top. In October 1994, PanWorld became subject to the periodic reporting requirements of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13.

29. PanWorld filed the following required periodic reports on Forms 10-Q, 10-QSB, 10-K and 10-KSB with the Commission for the following periods on the following dates:

Period	Form	Date Filed
a. Year ended 12/31/89	10-K	September 6, 1990
b. Quarter ended 3/31/90	10-Q	September 20, 1990
c. Quarter ended 6/30/90	10-Q	September 20, 1990
d. Quarter ended 9/30/90	10-Q	October 11, 1990
e. Year ended 12/31/90	10-K	July 22, 1991
f. Quarter ended 3/31/91	10-Q	August 19, 1991
g. Quarter ended 6/30/91	10-Q	August 27, 1991
h. Quarter ended 9/30/91	10-Q	November 11, 1991
i. Year ended 12/31/91	10-K	July 3, 1992
j. Quarter ended 3/31/92	10-Q	September 18, 1992
k. Quarter ended 6/30/92	10-Q	September 21, 1992
l. Quarter ended 9/30/92	10-Q	November 11, 1992
m. Year ended 12/31/92	10-K	June 1, 1993
n. Quarter ended 3/31/93	10-Q	June 7, 1993
o. Quarter ended 6/30/93	10-Q	January 31, 1994
p. Quarter ended 9/30/93	10-Q	January 31, 1994
q. Year ended 12/31/93	10-KSB	May 4, 1994
r. Quarter ended 3/31/94	10-Q	July 18, 1994
s. Quarter ended 6/30/94	10-Q	October 5, 1994
t. Quarter ended 9/30/94	10-QSB	January 20, 1995
u. Year ended 12/31/94	10-KSB	July 10, 1995
v. Quarter ended 3/31/95	10-QSB	July 31, 1995

30. PanWorld has not filed any quarterly or annual reports since its March 1995 Form 10-QSB filed on July 31, 1995.

31. Pursuant to Sections 13(a) and 15(d) of the Exchange Act and Rules 13a-13 and 15d-13, quarterly reports on Form 10-Q and 10-QSB must be filed within 45 days of the end of the quarter. Pursuant to Sections 13(a) and 15(d) of the Exchange Act and Rules 13a-1 and 15d-1, annual reports on Forms 10-K and 10-KSB must be filed within 90 days of the end of the fiscal year. PanWorld failed to file nineteen of twenty-one quarterly reports within 45 days of the end of the quarter. PanWorld failed to file seven annual reports within 90 days of the end of the fiscal year.

32. The periodic reports listed above in paragraph 29 were prepared and distributed by Robert Weeks, Hesterman, and Ken Weeks. Robert Weeks signed all the periodic reports except the quarterly reports for 1991 and 1992 listed in subparagraphs f, g, h, j, k and l of paragraph 29.

33. From 1989 to date, PanWorld, Robert Weeks, Hesterman and Ken Weeks failed to disclose in PanWorld's periodic reports to the Commission, and in its written and oral communications with shareholders and the public that Hesterman and Ken Weeks were control persons of PanWorld. They also failed to disclose that Hesterman had been criminally convicted of securities fraud in 1985.

FRAUDULENT COMMISSION FILINGS

34. From September 1990 through November 1992 in connection with the fraudulent scheme, PanWorld, under the direction of Robert Weeks, Hesterman and Ken Weeks, fraudulently and/or without reasonable basis, filed with the Commission three annual reports on Forms 10-K and nine quarterly reports on Forms 10-Q. These periodic reports falsely claimed:

a. The Cerro Blanco and Pabellon properties were assets valued at \$1.5 million in the financial statements. The value of the Cerro Blanco and Pabellon mine tailings was based on the 1.5 million shares of preferred stock which were purportedly exchanged for the properties. PanWorld, Robert Weeks, Ken Weeks and Hesterman arbitrarily set the value of the preferred shares at \$1 per share. This valuation violated Generally Accepted Accounting Principles (GAAP), and caused a material overstatement of the value of PanWorld's assets. Further, PanWorld never delivered the stock to the seller.

b. From September through July 1992, that Salar was an asset valued at \$1 million in the financial statements. The value of Salar claims was based on the \$1 par value of 1 million shares of preferred stock, which were purportedly exchanged for the property. PanWorld, Robert Weeks, Ken Weeks and Hesterman arbitrarily set the value of the preferred shares at \$1.00 per share. This

valuation violated GAAP, and caused a material overstatement of the value of PanWorld's assets. Again, PanWorld never delivered the stock to the seller.

c. Salar mining was listed as an asset through July 1992 despite the fact that in June 1990, PanWorld lost Salar, because it failed to perform work necessary to maintain the claims under Chilean law.

d. Cerro Blanco and Pabellon were assets through November 1992 despite the fact that in November 1990, the seller of Cerro Blanco and Pabellon gave PanWorld notice that the contract was void, because PanWorld had failed to deliver the preferred stock it had promised to pay for the properties.

e. Cerro Blanco and Pabellon were valuable mineral properties that could be processed to extract precious metals despite the fact that PanWorld learned by June 1990 that Cerro Blanco and Pabellon had no commercial value.

35. From July 1991 through July 1994 in connection with the fraudulent scheme, PanWorld, under the direction of Robert Weeks, Hesterman and Ken Weeks fraudulently and/or without reasonable basis filed with the Commission four annual reports on Forms 10-K and 10-KSB, and ten quarterly reports on Forms 10-Q. These periodic reports falsely claimed or failed to disclose:

a. Las Rosas mine was valued as an asset worth \$3,473,000 in the financial statements. The value of Las Rosas was based on the \$1 par value of the 3 million shares of preferred stock, arbitrarily assigned by PanWorld, Robert Weeks, Ken Weeks, and Hesterman, that were exchanged for the property and \$473,000 for the installment payments. PanWorld, Robert Weeks, Ken Weeks and Hesterman arbitrarily set the value of the preferred shares at \$1.00 per share. This valuation violated GAAP, and caused a material overstatement of the value of PanWorld's assets. PanWorld never delivered the preferred shares to the sellers.

b. Beginning in January 1994, Las Rosas mine was valued as an asset worth \$1.723 million in the financial statements. This reduced value was set arbitrarily, violated GAAP, and caused a material overstatement of the value of PanWorld's assets.

c. The Europa Mill was valued as an asset worth \$133,000 in the financial statements. The value was based on \$1 per share for 36,000 shares of common stock plus the amount of cash to be paid to the sellers and debts to be assumed. This value of the common stock was arbitrarily assigned by Robert Weeks, Hesterman, and Ken Weeks. This valuation violated GAAP, and caused a material overstatement of the value of PanWorld's assets. Additionally, PanWorld never delivered the stock and failed to make full cash payment for the Europa Mill. The stock to be exchanged for the mill

was restricted, could not be freely traded for two years, and other similar shares issued at about this time by PanWorld were valued at less than \$1.

d. Until June 1993 that the sellers of the Europa Mill had filed a lawsuit for specific performance requiring PanWorld to make the payments due under the agreement, and that PanWorld would suffer no loss of property or income regardless of the outcome of the suit. In fact, the lawsuit was to rescind the agreement and return ownership and possession of the mill to the sellers. The periodic reports failed to disclose that the Europa Mill was crucial to PanWorld's ability to process ore from Las Rosas mine and that the loss of the mill would adversely affect the company's ability to process that ore.

e. The periodic report filed in July 1993 announced that PanWorld had entered into a joint venture with a Canadian corporation to operate the Europa Mill, but the report failed to disclose that PanWorld had already lost possession of the Europa Mill.

f. From December 1992 until January 1994, the periodic reports failed to disclose that PanWorld had lost possession of the Europa Mill in December 1992.

36. In June 1993 in connection with the fraudulent scheme, PanWorld, under the direction of Robert Weeks, Hesterman, and Ken Weeks, fraudulently and/or without reasonable basis filed the

March 1993 Form 10-Q with the Commission. This periodic report falsely claimed or failed to disclose:

a. The Washington Gulch mine as an asset worth \$5.5 million in financial statements. The value of the Washington Gulch mine was based on the \$2 par value assigned to the 2.5 million shares preferred stock and the \$1 value assigned to the 500,000 shares of restricted common stock exchanged for the property. The value of the preferred stock and common stock was arbitrarily assigned by PanWorld, Robert Weeks, Ken Weeks and Hesterman. This valuation violated GAAP, and caused a material overstatement of the value of PanWorld's assets.

b. That the sellers had declared the agreement void, because PanWorld had failed to deliver unrestricted stock to the sellers or make any of the payments required under the terms of the agreement.

37. From May 1994 through July 1995 in connection with the fraudulent scheme, PanWorld, under the direction of Robert Weeks, Hesterman and Ken Weeks, fraudulently and/or without reasonable basis filed with the Commission two annual reports on Forms 10-KSB, and four quarterly reports on Forms 10-Q and 10-QSB. These periodic reports falsely claimed:

a. The Richfield assets were valued at \$6,181,845 in the financial statements. The value of the Richfield assets was based

on the \$6 per share par value of 1 million preferred stock exchanged for the assets, and the debts assumed. The par value of the preferred shares was arbitrarily set by Robert Weeks, Hesterman and Ken Weeks. This valuation violated GAAP, and caused a material overstatement of the value of PanWorld's assets.

b. The Mapsa iron ore project was an asset worth \$3,250,000 in the financial statements. The value of Mapsa was based on the \$10 par value of the 321,000 shares of preferred stock, arbitrarily assigned by PanWorld, Robert Weeks, Ken Weeks and Hesterman, that were to be exchanged for the property and \$40,000 in cash that was paid to the sellers. This valuation violated GAAP, and caused a material overstatement of the value of PanWorld's assets.

PANWORLD ISSUES MATERIALLY FALSE AND MISLEADING PROMOTIONAL MATERIALS

38. From November 1989 through November 1992, in connection with the fraudulent scheme, PanWorld, under the direction of Robert Weeks, Hesterman and Ken Weeks, fraudulently and/or without reasonable basis, issued a series of materially false and misleading promotional materials touting PanWorld's success in the mining business and announcing other corporate developments. These promotional materials, including press releases, advertisements, due diligence materials, and "research reports," which were all publicly distributed, caused PanWorld's stock price to increase from

no trading in early November 1989 to a high of \$2.60 in March 1990, before retreating to approximately \$.50 in March 1991.

These promotional materials falsely claimed:

a. PanWorld had acquired two mine tailings properties, Cerro Blanco and Pabellon, in Chile for \$1.5 million. In fact, PanWorld never paid for these properties.

b. Up to 2.02 ounces of gold and 50 ounces of silver per ton could be recovered from the properties and made other similar statements about the amount of gold and silver that could be recovered per ton.

c. Cerro Blanco contained 300,000 tons of materials worth \$1,230 per ton or gross projected revenues of \$369 million, and Pabellon contained 150,000 tons of materials worth \$1,060 per ton or gross revenues of \$159 million, and made other projections of dollar values per ton, gross revenues and earnings per share ranging from \$4.91 to \$8.74 per share.

d. Cerro Blanco was valued around \$600 million, Pabellon was valued at \$76 million, and PanWorld had acquired a third property worth \$5 billion.

e. PanWorld had a special proprietary technology (state-of-the-art chemical extraction method) able to recover gold and silver left by old, inefficient mining activities.

PANWORLD ACQUIRES ADDITIONAL MINING ASSETS TO CREATE INTEREST IN ITS SECURITIES

39. Between September 1990 and December 1995, in connection with the fraudulent scheme, PanWorld, under the direction of Robert Weeks, Hesterman, and Ken Weeks, fraudulently and/or without reasonable basis issued and publicly distributed a series of materially false and misleading shareholder letters, press releases and fact sheets about developments at Las Rosas mine and other properties in Chile. These materials falsely claimed:

a. In September 1990, PanWorld had acquired Las Rosas copper mine for \$600,000 and the Europa Mill to process ore from the mine for \$133,000. PanWorld stated that historically the copper ranged from 3 to 8 percent ton, silver ranged from 3 to 8 ounces per ton, and gold ranged from .02 to .05 ounces per ton. PanWorld projected revenues of \$50 to \$73.60 per ton with 100 tons of material per day to be processed within 30 days, when in fact PanWorld had no accurate data on the amount of copper that could be recovered from Los Rosas or the costs of recovery and PanWorld possessed a geologic report estimating the mine contained only 50,000 tons of 1 percent copper.

b. In September 1990, PanWorld was continuing to develop its proprietary technology to extract gold from mine tailings. In

fact, PanWorld, Robert Weeks, Ken Weeks and Hesterman had learned in June 1990 that the technology was a fraud.

c. In November 1990, PanWorld had been in revenue-generating operation since September 1990, that the copper sulfide material from Los Rosas had a value of \$65 per ton based on 200 grams of silver, 1 gram of gold and 1.5 to 3 percent copper, and it had high grade deposits of copper oxide containing 4 percent copper as compared to Kennecott Copper Corporation which reports less than 1 percent copper from its Utah open pit mine.

d. In January 1991, the Europa Mill had the capacity to process 175-250 tons per day, that the material being processed from Los Rosas contained 1.2 to 1.5 percent copper per ton and 100 grams of silver per ton and would produce revenues of \$31 to \$35 per ton at a cost of \$10 to \$15 per ton, and PanWorld would have a positive cash flow and earnings by the end of the quarter.

e. In January 1991, Las Rosas contained 3 million tons of proven reserves, 11.5 million tons of probable reserves, and 50 million tons of indicated reserves consisting of 1 to 3 per cent copper that was worth \$60 million and would produce profit per ton of \$45.

f. In March 1991, Las Rosas contained one billion or more tons of copper-bearing oxide ore, that the ore from the mine site contained 1 to 3 percent copper, that the value of Las Rosas was

\$60 million, and that the company expected pre-tax earnings of \$1 per share in 2 to 3 years.

g. In March 1991, PanWorld sent letters to shareholders and others that contained a report on Las Rosas stating that Las Rosas contained 3,085,000 tons of proven reserves, 9,400,000 tons of probable reserves, and 46,000,000 tons of indicated reserves of copper ore; that Las Rosas mine was worth \$60 million; and would produce yearly income of \$2 million from the copper sulfides and \$7 million from the copper oxides. The report was preliminary; the author of the report indirectly owned shares in PanWorld; PanWorld possessed other geologic reports on Las Rosas that stated the probable reserves were substantially less and in the range of only 50,000 to 200,000 tons; insufficient exploration and testing had been done to support the claims of proven reserves; and calculations of recoverable values were based on 2.2 per cent copper, when PanWorld's own operations were recovering only 0.8 per cent copper.

h. In April and May 1991, PanWorld had located a high grade "lens" at Los Rosas containing 40,000 tons of 2.59 per cent or higher grade copper. The company's gross income from Las Rosas ranges from \$66.20 per ton to \$112.40 per ton. PanWorld stated that if the lens averaged 3.5 per cent copper, then it would net \$300,000 per month.

i. In June 1991, material from the Los Rosas high grade "lens" was being mixed with other material for an average grade of 1.5 per cent to 2.5 per cent copper. It compared the grade of Las Rosas' copper to Phelps Dodge's largest copper mine in Arizona which averages 0.76 per cent copper. It also represent that PanWorld has located a second high grade "lens" containing 9 per cent to 12 per cent copper.

j. In February 1992, production had commenced at Europa Mill at an expanded capacity of 200 tons per day and it was recovering 1.1 to 1.3 percent copper, 50 to 150 grams of silver and .5 grams of gold collectively worth \$30 per ton from Los Rosas. In fact by January 1992, PanWorld had largely abandoned its attempt to recover copper from Las Rosas. In January 1992, PanWorld also had lost a lawsuit brought by the sellers of the Europa Mill, and the court had ordered PanWorld to return ownership of the mill to the sellers.

k. In June 1992, that the Europa Mill would be operating at 500 tons per day by September 1992 and would have annual net revenues of \$.08 per share.

40. In connection with the fraudulent scheme, PanWorld, under the direction of Robert Weeks, Hesterman and Ken Weeks, fraudulently and/or without reasonable basis issued a materially false and misleading press release in March 1993 about acquisition

of Washington Gulch L.P. Inc. The press release falsely claimed PanWorld had acquired half of Washington Gulch L.P., Inc., whose assets included a mining claim near Helena, Montana, in exchange for \$5.5 million in preferred stock, common stock, and cash payments. In fact material terms of the agreement had not yet been finalized, and PanWorld did not have the cash resources to make the payments required by the contract.

41. Between January 1993 and May 1995, in connection with the fraudulent scheme, PanWorld, under the direction of Robert Weeks, Hesterman and Ken Weeks, fraudulently and/or without reasonable basis issued a series of materially false and misleading promotional materials touting its success in the mining business and announcing other corporate developments. These promotional materials, including press releases, advertisements, overview letters, due diligence materials, radio programs, televised infomercials and "research reports," caused PanWorld's stock price to increase from approximately \$0.13 in early 1994 to a high price of \$0.20 in March 1994, before declining to \$0.0079 in May 1995 at the time of suspension of trading in PanWorld's stock by the Commission. These materials falsely claimed:

a. PanWorld had acquired the assets of Richfield International, Inc. consisting of (1) a license to use certain proprietary placer mining technology; (2) a minority interest in the

Washington Gulch mining project in Montana; (3) the Montague Metal & Machine, Inc. (Montague Metal) manufacturing facility in California which was equipped to manufacture the proprietary technology; and (4) a lease on the Spring Creek mineral property in California. PanWorld claimed that Washington Gulch contained 1 million cubic yards of proven ore reserves and 6 million cubic yards of possible reserves with an average gold value of \$17.00/cubic yard. It projected gross profits of \$5 million annually for the next 20 years from operations at Washington Gulch. PanWorld stated that these assets were acquired for \$6 million and were appraised at \$10.5 million.

b. In fact, the Richfield proprietary placer mining technology was untested, and had never been used in a production scale operation.

c. In fact there was a dispute over PanWorld's ownership of Washington Gulch, and PanWorld had geologic reports that questioned the amount of gold contained in the property. On or about September 13, 1993, February 15, 1994 and March 18, 1994, PanWorld and Robert Weeks received notice that PanWorld had no ownership interest in the property either directly as a result of the agreement dated March 3, 1993 or indirectly through an interest in Richfield. After receiving this notice, PanWorld, Robert Weeks, Hesterman and Ken Weeks continued to claim the Richfield assets,

including a twenty-five percent interest in Washington Gulch, as part of its assets in its periodic reports filed with the Commission from January 1994 through July 1995, and in other public statements.

d. In fact, the assets of Montague Metal were old equipment parts and tools located on rented property. There were no manufacturing tools, no manufacturing staff, no detailed plans or descriptions for how to configure the equipment, and PanWorld had failed to pay the rent.

e. In fact, PanWorld did not pay \$6 million for the Richfield assets and the appraisal was based on property and water rights which Washington Gulch did not own.

42. Between January 1994 and May 1995, PanWorld, at the direction of Robert Weeks, Hesterman and Ken Weeks, fraudulently and/or without reasonable basis made several public disclosures in letters, newsletters, televised infomercials and other promotional materials that it had acquired an interest in the San Jose mining property located in Peru, that San Jose contained average grade of .78 per cent copper oxide and 150 million to 750 million tons of copper oxide material, and that PanWorld was offering the property as a joint venture opportunity to other mining companies. In fact, PanWorld had failed to make the first option payment that

was due in September 1993 and all subsequent option payments that were due under the agreement.

43. Between February 1994 and January 1995, PanWorld, at the direction of Robert Weeks, Ken Weeks and Hesterman, fraudulently and/or without reasonable basis made statements in radio programs, press releases, letters, newsletters, and other promotional materials about the Mapsa iron ore project (also known as the Opaban property) in Peru. These statements falsely claimed:

a. Mapsa contained 600 million tons of measured resource containing 68 per cent hematite (iron ore) worth \$40 per ton with costs \$3 per ton to mine, and projected net profits of \$300 million per year from a plant producing 12 million tons of ore per year.

b. In July, October, November 1994 and January 1995, in several press releases and a "research report," that Mapsa contained 1.5 to 2.0 billion tons of hematite (iron ore) and proven/probable reserves of 700 million tons that was worth \$28 billion.

c. Further, PanWorld, Robert Weeks, and Hesterman knew that some of the reserve calculations for Mapsa were prepared by a Peruvian consulting firm that had a conflict of interest as a result of its twelve percent ownership interest in the Mapsa property and its president's status as a shareholder in PanWorld.

44. Between September 1994 and March 1995, PanWorld at the direction of Robert Weeks, Ken Weeks and Hesterman, fraudulently and/or without reasonable basis issued and publicly distributed press releases, letters, newsletters, "research reports" and other promotional materials about its joint venture with Bartos Gold Holding Company (Bartos), a Turks and Caicos Islands entity, to operate three mines in Bolivia. These materials falsely claimed:

a. In a press release and shareholder letter in September and October 1994, that PanWorld had entered into a joint venture with Bartos to acquire a thirty percent interest in the revenues from three Bolivian gold properties (the Bartos properties) in exchange for 30,000,000 shares of PanWorld common stock. Between October 1994 and January 1995, PanWorld issued an additional 20 million shares of common stock to Bartos as additional compensation for the property. PanWorld stated that the Bartos properties contained 3 million tons of proven gold reserves plus 58 million tons of measured and indicated resources, and that the recoverable values of ore ranged from \$15 to \$126 per ton. PanWorld stated that it expected the mines to generate yearly revenues of \$12 million, and earnings per share of \$.10. In fact, there were serious problems with the properties that would impair production of gold and the resulting recognition of revenues and earnings from the Bolivian properties.

45. In October 1994, PanWorld, at the direction of Robert Weeks, Hesterman and Ken Weeks, fraudulently and/or without reasonable basis sent shareholders a notice stating that the price of PanWorld's shares was artificially depressed because certain broker-dealers were engaged in short selling. PanWorld requested that shareholders take possession of their share certificates to stop the broker-dealers from borrowing the shares to cover the short positions. In fact, the depressed price was the result of PanWorld issuing tens of millions of shares since January 1994, which were flooding the market, to pay promoters that were hired to tout PanWorld's stock to the investing public in order to artificially stimulate demand for the stock.

46. During the summer of 1994, PanWorld, Robert Weeks, Hesterman, Krasny and others appeared on several videos, "Financial Inquiry," "Executive Report," and "Your On The Line," that were broadcast over television, and sent to brokers and investors. In these videos, Robert Weeks, Hesterman, Krasny and other persons acting in concert with them fraudulently and/or without reasonable basis claimed:

a. The (Mapsa) iron ore project contained at least 600 million to 3 billion tons of measured resource with a value of \$40 per ton or total value of \$120 billion and would produce earnings of \$0.10 per share.

b. The San Jose copper project contained measured resources of 150 million to 300 million tons. In fact there was a dispute over the ownership of San Jose, and PanWorld was making no payments under the agreement.

c. The Richfield technology could recover gold from materials that were previously mined at a commercial profit, and that this technology added a \$6 million asset to PanWorld's financial statements. In fact the Richfield technology has never been tested in full production and the value of the technology was overstated.

d. The Washington Gulch project contained 1 million cubic yards of ore averaging \$17 a yard with costs of \$6 a yard with possible additional resources of 20 million cubic yards.

e. The Spring Creek project had 6 million tons of possible reserves worth \$20 to \$50 a yard.

f. PanWorld would be listed on Nasdaq within a year and would trade at \$50 per share within three years and at \$5 per share within a year.

g. The volume of trading in PanWorld stock was between 250,000 and 1 million shares a day; PanWorld stock was very liquid because of the extraordinary volume of shares, and; only a limited number of PanWorld shares were publicly trading. In fact, the high volume was orchestrated by PanWorld, Robert Weeks, Hesterman,

Ken Weeks, Krasny, L.K. Management, Puritan, Fabiilli, Wenger, Rita Wenger, and others who were selling stock into the market to create the appearance of active trading.

h. PanWorld was similar to a major mining company whose stock traded historically at \$.17 per share and now trades at \$23.00 per share.

i. Krasny had worked as a broker or investment analyst for over 30 years. In fact, Krasny had never worked as a broker or analyst.

j. L.K. Management was not hired to raise money for PanWorld. In fact, L.K. Management and Krasny paid part of the proceeds from its stock sales to bank accounts that were used to pay PanWorld's expenses.

k. PanWorld was going to begin operations and would generate \$12 million net profits a year, and earnings of \$0.20 per share.

l. PanWorld was engaged in a \$5 million private placement with \$2.5 million to be raised as a firm underwriting agreement.

m. PanWorld had new mining technology, exclusive licensing rights, and a manufacturing facility that could build four processing plants a year. The Richfield technology was developed at a cost of \$50 million dollars. The Richfield technology was actually being used. The cost to mine using the Richfield technology

was only \$3.50 per ton. PanWorld's production costs were so low that they could make money with gold at any reasonable price.

n. PanWorld had been written up in an environmental newsletter because the Richfield technology for placer mining was environmentally safe, when, in fact, PanWorld had paid to have the article to be published.

ROBERT WEEKS, KEN WEEKS AND HESTERMAN DISTRIBUTE RESTRICTED PANWORLD SHARES AND MANIPULATE PRICE BETWEEN 1991 AND 1993

47. While issuing false public statements described in this complaint, PanWorld entered into a written agreement in January 1991 with a stock brokerage firm in New York, to provide "investment banking" services and to act as a market maker in PanWorld stock.

48. At the same time, PanWorld, Robert Weeks, Ken Weeks, and Hesterman also entered into a secret oral agreement with the brokerage firm to provide Panworld stock to brokerage firm at half the current market price in exchange for brokerage firm artificially raising the price of PanWorld stock and selling the stock to public investors.

49. The brokerage firm began actively selling PanWorld's stock in April 1991 at \$0.50 per share. By May 1991, the brokerage firm had raised the price to approximately \$0.787 per share and maintained the price in the range of \$0.75 per share until ap-

proximately December 1991 when the price dropped to \$0.59 per share. During 1992 and early 1993, the price was approximately \$0.509 per share. When the brokerage firm stopped making a market in PanWorld stock in March 1993, the price dropped to \$0.12 per share.

50. The brokerage firm had a pattern of selling more PanWorld stock than it owned in inventory and then replenishing its supply through purchases from broker-dealers in Salt Lake City, Utah, who in turn bought the stock from Robert Weeks, Ken Weeks, Hesterman and their nominees. These purchases by the Salt Lake City broker-dealers were usually at about half of the brokerage firm's public market price.

51. From January 1991 through at least March 1993, Robert Weeks, Ken Weeks, and Hesterman, directly and indirectly and through various nominees, sold approximately 10 million shares of PanWorld stock to various Salt Lake City broker-dealers who then sold the stock to the brokerage firm pursuant to the secret oral agreement. Robert Weeks, Ken Weeks, Hesterman and their nominees realized at least \$5.5 million from their sales of PanWorld stock.

CONSULTANTS ARE HIRED TO TOUT PANWORLD STOCK

52. During 1994 and 1995, Robert Weeks, Hesterman, and Ken Weeks agreed to supply stock to Wenger, Puritan, Fabiilli, L.K. Management, Krasny, Gilbert, and others in exchange for their

agreements to manipulate the price of PanWorld stock and to create artificial public demand for the stock through a fraudulent and orchestrated campaign to tout PanWorld stock.

Wenger

53. In February 1994 and March 1994, PanWorld entered into two consulting agreements with Jerome Wenger to promote PanWorld's stock in exchange for shares of PanWorld stock.

54. During 1994 and 1995, Wenger hosted more than a dozen radio shows and investor seminars that featured PanWorld and in which he interviewed Robert Weeks, Hesterman, Ken Weeks, and other persons about PanWorld. During these radio shows and investor seminars, Wenger fraudulently and/or without reasonable basis recommended that investors buy PanWorld stock.

55. In approximately July 1994, Wenger published an article about PanWorld in his newsletter, "*The Next SuperStock*." Wenger fraudulently and/or without reasonable basis recommended that investors purchase PanWorld stock. Wenger published at least four additional volumes of "*The Next SuperStock*" through July 1995 that fraudulently and/or without reasonable basis recommended investors either buy or hold PanWorld stock.

56. While recommending PanWorld stock, Wenger failed to disclose or fraudulently claimed:

a. Wenger was paid 2.1 million shares of PanWorld stock to promote PanWorld.

b. Wenger and Rita Wenger were selling their PanWorld stock while Wenger was making his strong buy recommendations to the investing public.

c. In February 1994, Wenger told investors that he would wait at least a month before he purchased any PanWorld stock. In fact, he already had received over a million shares from the company as compensation for his services.

d. By June 1994, Wenger was telling investors that he had bought PanWorld stock at \$0.19 per share, that he had bought at \$0.15 per share, and he was buying more PanWorld stock at \$0.10 per share. In fact Wenger never purchased any PanWorld shares until August 1994 and those purchases were to cover short sales.

e. Wenger compared PanWorld to other successful mining companies whose stock prices had sky-rocketed.

f. During the radio shows, Wenger urged investors to call a brokerage firm to purchase PanWorld stock, but he did not disclose that he was selling his PanWorld stock through the same firm.

Puritan and Fabiilli

57. From January 1994 through March 1995, Fabiilli and Puritan shared an office with the New York City branch of a brokerage firm that was managed by Fabiilli's brother-in-law.

58. In March 1994, PanWorld entered into a consulting agreement with Puritan and Fabiilli to promote and sell PanWorld stock. Puritan received shares of PanWorld common stock as compensation.

59. PanWorld gave Fabiilli the names of investors who had called the toll-free telephone number announced on Wenger's radio shows, in promotional materials, and in various televised infomercials sponsored by PanWorld. Fabiilli paid sales agents to call the investors and to solicit them to purchase PanWorld stock. When an investor was interested in purchasing the stock, the sales agent referred the investor to a broker at the brokerage firm. Puritan sales agents, under the direction of Fabiilli, used high pressure and fraudulent selling tactics to interest investors in PanWorld stock. Puritan and Fabiilli fraudulently and without a reasonable basis distributed promotional materials to investors including PanWorld's overview letter and press releases. Puritan, at the direction of Fabiilli, also secretly paid brokers at the brokerage firm to sell PanWorld stock to investors, which undisclosed compensation was in addition to the broker's normal compensation.

60. While Puritan and Fabiilli were referring public investors to the brokerage firm to purchase PanWorld stock, they and defendants Robert Weeks, Hesterman, Ken Weeks, L.K. Management, Krasny, Wenger, Rita Wenger, and Canyon were selling PanWorld stock to create an artificially stimulated market in order to sell their PanWorld stock at inflated prices.

61. While recommending PanWorld stock, Puritan and Fabiilli failed to disclose material facts:

a. Puritan and Fabiilli were paid at least 29,875,000 shares of PanWorld stock to promote PanWorld.

b. Puritan and Fabiilli were selling their PanWorld stock while Puritan's sales agents, at Fabiilli's direction, were making strong buy recommendations to the investing public.

c. Puritan and Fabiilli were engaging in manipulative trades of PanWorld stock to create the appearance of active trading.

62. During 1994 and 1995, Fabiilli and Puritan engaged in fraudulent and manipulative trading of PanWorld stock. Between April and July 1994, Fabiilli and Puritan engaged in at least twenty wash trades in which they bought and sold approximately the same amount of shares on the same day with no resulting change in beneficial ownership. On May 10, 1994, Fabiilli entered a series of five sell orders for the brokerage account of Puritan at suc-

cessively higher prices moving the price from \$0.15 per share to \$0.18 per share.

63. Fabiilli had a prearrangement to supply PanWorld stock to a brokerage firm to meet the demand generated by the activities of the salesmen and brokers that he paid, and by the other promotional activities being conducted by PanWorld and others.

64. Between February 1994 and January 1995, the brokerage firm sold approximately 53,576,740 shares to approximately 450 retail customers. The brokerage firm purchased approximately 53,271,191 of these shares from other broker-dealers. Of this amount, Puritan and Fabiilli supplied approximately 50,793,452 shares or 95 percent of the stock that the brokerage firm purchased from other broker-dealers.

Krasny and L.K. Management

65. In or about May 1994, PanWorld entered into a consulting agreement with L.K. Management and Krasny to promote and sell PanWorld stock. As compensation, L.K. Management was to receive 416,000 shares of PanWorld stock.

66. Krasny and L.K. Management employed a group of telephone solicitors who called potential investors to solicit them to purchase PanWorld stock. The telephone solicitors called investors who had made inquiries about PanWorld on the toll-free telephone number advertised either on the Wenger radio show or the televised

infomercials. They also called other potential investors whose names appeared on lists purchased by Krasny and L.K. Management.

67. At Krasny's direction, the telephone solicitors used scripts, and fraudulently and/or without reasonable basis told investors that:

a. Investors would double or triple their money within four to six months.

b. The price of the stock would increase to specific dollar amounts.

c. PanWorld owned gold fields in Montana and had 123,000,000 ounces of gold.

d. PanWorld could expect net profits of \$12 million and earnings of \$0.20 per share.

68. The telephone solicitors failed to disclose material facts:

a. L.K. Management and Krasny had received 57,416,000 shares of PanWorld stock as compensation from PanWorld for soliciting investors.

b. L.K. Management and Krasny paid at least \$125,470 from its stock sales indirectly PanWorld and its control persons. In fact, they stated that L.K. Management was not hired by PanWorld to raise money for PanWorld.

c. L.K. Management and Krasny were selling PanWorld stock at the same time that the telephone solicitors were recommending investors purchase the stock. L.K. Management and Krasny were supplying the stock to brokerage firms to meet the demand generated by the telephone and other solicitations.

69. Krasny instructed the telephone solicitors to refer the persons interested in buying PanWorld stock to particular "friendly" brokers. They asked investors to send L.K. Management by mail or facsimile a copy of the confirmation showing the amount of stock the investor had bought. The telephone solicitors' compensation was based on the amount of stock that they sold.

70. During 1994, Krasny appeared on at least three televised infomercials promoting PanWorld stock. He fraudulently and/or without reasonable basis made material statements about PanWorld:

a. PanWorld's stock will be traded on Nasdaq within a year.

b. The price of PanWorld stock could be \$5.00 per share within a year, and \$50.00 per share in three years.

He failed to disclose material facts:

c. L.K. Management and Krasny were paid at least 57,416,000 shares of PanWorld stock to promote PanWorld.

d. L.K. Management and Krasny were selling their PanWorld stock while L.K. Management's sales agents, at Krasny's di-

rection, were making strong buy recommendations to the investing public.

Gilbert

71. During the fall of 1994, Gilbert entered into a secret agreement with Robert Weeks and Hesterman in which he agreed to purchase and hold shares of PanWorld stock, and to engage in manipulative trading practices. The purpose of Gilbert's buying plan was to reduce the supply of stock available to the public in order to increase the price per share of PanWorld stock. As compensation for his activities, Gilbert was to receive shares of stock from PanWorld.

72. Between November 1994 and March 1995, Gilbert purchased 21,580,000 shares of PanWorld stock for approximately \$236,645 through nine brokerage accounts, held in his name or the name of an entity that he controls.

73. On March 2, 1995, Gilbert made eight of the purchase at three brokerage firms at successively higher prices, starting at \$0.0085 and ending at \$0.011 per share.

74. On June 6, 1995, PanWorld issued 4.3 million shares of stock to Gilbert for participating in the manipulation.

STOCK SALES

Robert Weeks, Ken Weeks, and Hesterman sell unregistered common stock

75. During 1990 and 1991, Robert Weeks, Hesterman and their nominees sold the 1.3 million shares of stock that they had been secretly received as part of the merger with Ridgtop as described above, and they secretly paid at least \$650,000 to PanWorld to operate the company and kept at least \$100,000 for themselves.

76. No registration statement was filed with the Commission for these 1.3 million shares of stock sold by Hesterman, Robert Weeks and their nominees.

77. Between April 15, 1991 and April 2, 1992, Robert Weeks, Ken Weeks, and their nominees sold at least 2,960,000 shares of restricted PanWorld common stock for proceeds of approximately \$705,000. No registration statement was filed or in effect for the offer and sale of these shares.

78. Between April 15, 1991 and April 2, 1992, Hesterman and his nominees sold at least 2,333,438 shares of restricted PanWorld of common stock for proceeds of approximately \$675,000. No registration statement was filed or in effect for the offer and sale of these shares.

79. Between February 1992 and January 1994, there were at least six three-month periods when Robert Weeks, Ken Weeks, Hes-

terman and their nominees, acting in concert, sold restricted shares in excess of the one percent volume limitation contained in Commission Rule 144. They sold at least 5,941,050 shares for proceeds of approximately \$924,000. No registration statement was filed or in effect for the offer and sale of these shares.

Form S-8 Shares and Other Unregistered Shares Issued and Sold

80. Between January 1994 and February 1995, at the direction of Robert Weeks, Ken Weeks, and Hesterman, PanWorld issued 167,091,000 shares of common stock to various consultants, including Wenger, Hesterman, L.K. Management, Puritan, and Hesterman, who collectively received at least 99,791,000 of those shares. No registration statement was in effect for the issuance of these shares.

Unregistered Stock Sales by Wenger and Rita Wenger

81. Between February and March 1994, PanWorld issued 1.5 million unregistered shares to Wenger as payment for his services. On March 31, 1994 PanWorld registered the 1.5 million shares for sale by Wenger on a Form S-8. In April 1994, PanWorld issued an additional 600,000 unregistered shares to Wenger. No registration statement was in effect for the 600,000 shares.

82. Between April 14, 1994 and August 10, 1994, Wenger sold 97,000 shares of PanWorld stock for approximately \$11,728 to the brokerage firm where he had suggested his listeners purchase the

stock. He transferred 65,000 shares to third parties, and 938,000 shares to the brokerage account of his wife, Rita Wenger, at the same brokerage firm. Between April 1994 and August 1994, Rita Wenger sold 938,000 registered and unregistered shares of PanWorld stock for proceeds of approximately \$93,360. No registration statement was in effect for Rita Wenger's sale of 600,000 of these shares.

Unregistered Stock Sales by Puritan and Fabiilli

83. Between March 1994 and December 1994, PanWorld issued 29,875,000 shares of common stock to Puritan.

84. On August 19, 1994 PanWorld filed a Form S-8 registration statement registering for resale 8 million shares in the name of Puritan. On October 26, 1994 PanWorld filed a Form S-8 registration statement registering for resale 5 million shares in the name of Puritan. No registration statement was filed for the balance of 16,875,000 shares that PanWorld issued to Puritan.

85. Between April 1994 and December 1994, Puritan, at the direction of Fabiilli, sold approximately 29,875,000 shares of common stock for proceeds of approximately \$1,287,295. No registration statement was in effect for Puritan's sales of 16,875,000 of these shares.

86. Out of the money that Puritan received from its sales of PanWorld stock, Fabiilli and Puritan paid at least \$23,000 to bank

accounts controlled by Robert Weeks and Ken Weeks, and at least \$20,000 to bank accounts controlled by Hesterman. Puritan also paid at least \$210,000 to persons who had purportedly provided services to PanWorld.

Unregistered Stock Sales by Hesterman

87. Between May 1994 and January 1995, PanWorld issued 7 million shares to Hesterman and an additional 3.4 million shares to a corporation controlled by him. On May 25, 1994 PanWorld filed a Form S-8 registration statement which registered for resale 4 million of the shares that had been issued to Hesterman as of that date. However, for the balance of the 6.4 million shares, no registration statement was in effect for Hesterman's sales. Between May 1994 and May 1995, Hesterman and the corporation, which he controlled, sold at least 6.5 million shares for proceeds of at least \$33,689.

Unregistered Stock Sales by L.K. Management and Krasny

88. Between May 1994 and February 1995, PanWorld issued at least 57,416,000 shares to L.K. Management and others. These shares were placed in brokerage accounts that were controlled by Krasny.

89. On May 25, 1994 PanWorld filed a Form S-8 registering 416,000 shares for resale by L.K. Management. On August 19, 1994, PanWorld filed a Form S-8 registering 1,000,000 shares for resale

by L.K. Management. On October 26, 1994, PanWorld filed a Form S-8 registering an additional 2,000,000 shares for resale by L.K. Management.

90. Between May 1994 and July 1995, Krasny and L.K. Management sold approximately 57 million shares of PanWorld stock for proceeds of at least \$971,137. No registration statement was filed or in effect for the sales of 54 million PanWorld shares.

91. At least \$125,470 from these sales of PanWorld stock by L.K. Management and Krasny was paid into bank accounts controlled by Hesterman, and then paid indirectly to Robert Weeks and third parties to whom PanWorld owed money. L.K. Management and Krasny also paid third parties to whom PanWorld owed money.

PANWORLD, ROBERT WEEKS, KEN WEEKS AND HESTERMAN FILE MATERIALLY FALSE AND MISLEADING FORMS S-8

92. Between March and October 1994, PanWorld, at the direction of Robert Weeks, Hesterman, and Ken Weeks, filed four Forms S-8 discussed above to register shares issued to various consultants. Each Form S-8 was signed by Robert Weeks. Each form stated "The services rendered by the above-named advisors were not in connection with the offer or sale of securities in a capital raising transaction."

93. This statement was false because Fabiilli, Puritan, Krasny, L.K. Management, and Hesterman were engaged in capital

raising transactions by selling the PanWorld stock and returning part of the money to PanWorld, Robert Weeks, Ken Weeks, and Hesterman or paying debts owed to third parties by PanWorld.

ROBERT WEEKS, KEN WEEKS AND HESTERMAN ISSUE REGULATION S STOCK

94. Between January 1994 and June 1995, Robert Weeks, Ken Weeks, and Hesterman caused PanWorld to issue 275,166,170 shares of common stock to various persons and entities in sham Regulation S transactions. The offer and sale of these shares were not made in offshore transactions. These shares were offered and sold to persons who resided in the United States or to entities with discretionary accounts held by persons who resided in the United States. These sales were made while PanWorld and its affiliates were engaged in directed selling efforts described above in the complaint. No registration statement was in effect for the issuance of these 275,166,170 shares.

Sales of Bartos Stock

95. Between October 1994 and January 1995, PanWorld issued 50 million shares in the name of Bartos Gold Holding Company (Bartos) purportedly as payment for the joint venture in Bolivia.

96. These shares were issued purportedly to Bartos pursuant to an exemption from registration under Regulation S. However, the shares were actually delivered to brokerage accounts con-

trolled by U.S. residents and sold back into the U.S. market without a registration statement being filed.

97. Of the 50 million PanWorld shares issued in the name of Bartos, approximately 34 million shares were delivered to a brokerage account over which Fabiilli had trading authority. Fabiilli directed the account to sell the 34 million shares for gross proceeds of approximately \$344,801. No registration statement was in effect for these stock sales by Fabiilli.

98. Of the 50 million PanWorld shares issued in the name of Bartos, approximately 8.7 million shares were delivered to brokerage accounts controlled by nominees of Hesterman who lived in the United States. Between December 1994 and April 1995, Hesterman's nominees sold approximately 8.7 million shares for proceeds of approximately \$89,160. No registration statement was in effect for these stock sales by Hesterman's nominees.

Sales of CRC stock

99. Between December 1994 and April 1995, PanWorld issued 76 million shares in the name of Corporacion de Racionalizacion & Consultoria S.A. (CRC), a Peruvian consulting company, and an additional 24 million shares to affiliates of CRC. These shares were issued purportedly to CRC and its affiliates pursuant to an exemption from registration under Regulation S. However, the shares were actually delivered to brokerage accounts controlled by

U.S. residents and sold back into the U.S. market without a registration statement being filed.

100. Of the 100 million PanWorld shares issued in the name of CRC and its affiliates, approximately 60 million shares were delivered to brokerage accounts in the name of L.K. Management or brokerage accounts controlled by Krasny who resided in the United States. Between March 1995 and November 1995, Krasny directed the sales of approximately 51,630,000 shares for proceeds of at least \$312,289. No registration statement was in effect for these sales by Krasny.

101. Of the 100 million PanWorld shares issued in the name of CRC and its affiliates, approximately 27 million shares were delivered to brokerage accounts controlled by nominees of Hesterman who resided in the United States. Between December 1994 and April 1995, Hesterman's nominees sold the 27 million shares for proceeds of approximately \$252,116.

102. Of the 100 million PanWorld shares issued in the name of CRC and its affiliates, approximately 3 million shares were delivered to brokerage accounts controlled by Fabiilli. Fabiilli sold these shares during January 1995 for proceeds of approximately \$33,000.

Sales of Canyon Stock

103. Between January and April 1995, PanWorld issued 97 million shares of Regulation S stock to Canyon, which was controlled by Robert Weeks and Hesterman. These shares were issued purportedly to Canyon pursuant to an exemption from registration under Regulation S. However, the shares were actually delivered to brokerage accounts controlled by U.S. residents and sold back into the U.S. market without a registration statement being filed.

104. Between January and May 1995, Canyon sold approximately 65,750,000 shares for proceeds of at least \$557,557. No registration statement was in effect for these sales by Canyon.

Other stock sales to U.S. Residents

105. On March 25, 1994, PanWorld sold 66,667 shares to Poco Trust for \$10,000. No registration statement was in effect for this sale. These shares were issued purportedly to Poco Trust pursuant to an exemption from registration under Regulation S. However, the shares were actually delivered to the trust that was controlled by a U.S. resident and that paid for the stock with a check drawn on a bank in Utah.

106. On May 8, 1995, PanWorld sold 4 million shares to Alan Perl for \$20,000. No registration statement was in effect for this sale. These shares were issued purportedly to Perl pursuant to an exemption from registration under Regulation S. However,

Perl was a U.S. resident and paid for the stock with a check drawn on a bank in Rhode Island.

107. On June 9, 1995, PanWorld issued 4.3 million shares to Randy Gilbert. No registration statement was in effect for this sale. These shares were issued purportedly to Gilbert pursuant to an exemption from registration under Regulation S. However, Gilbert was a U.S. resident.

FIRST CLAIM

FRAUD - Violations by PanWorld, Robert Weeks, Ken Weeks, Hesterman, Fabiilli, Puritan, Krasny, L.K. Management, Wenger and Gilbert of Section 10(b) of the Exchange Act and Rule 10b-5 [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]

108. Paragraphs 1 through 107 are hereby realleged and incorporated by reference.

109. Defendants PanWorld, Robert Weeks, Ken Weeks, Hesterman, Fabiilli, Puritan, Krasny, L.K. Management, Wenger and Gilbert, directly and indirectly, with scienter, in connection with the purchase and sale of securities, the common and preferred stock of PanWorld, by use of the means or instrumentalities of interstate commerce, or the mails, have employed devices, schemes or artifices to defraud; have made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or have engaged in acts, practices or

courses of business which have been and are operating as a fraud or deceit upon the purchasers or sellers of such securities.

110. By reason of the conduct described in paragraph 108, defendants PanWorld, Robert Weeks, Ken Weeks, Hesterman, Fabiilli, Puritan, Krasny, L.K. Management, Wenger, and Gilbert have violated, are violating and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5].

SECOND CLAIM

FRAUD - Violations by PanWorld, Robert Weeks, Ken Weeks, Hesterman, Fabiilli, Puritan, Krasny, L.K. Management, and Wenger of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

111. Paragraphs 1 through 107 are hereby realleged and incorporated by reference.

112. Defendants PanWorld, Robert Weeks, Ken Weeks, Hesterman, Fabiilli, Puritan, Krasny, L.K. Management, and Wenger, directly and indirectly, with scienter, in the offer and sale of securities, the common and preferred stock of PanWorld, by use of the means or instrumentalities of transportation or communication in interstate commerce or by use of the mails, have employed devices, schemes or artifices to defraud.

113. By reason of the conduct described in paragraph 111, defendants PanWorld, Robert Weeks, Ken Weeks, Hesterman, Fabiilli, Puritan, Krasny, L.K. Management, and Wenger have violated, are

violating and, unless restrained and enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

THIRD CLAIM

FRAUD - Violations by PanWorld, Robert Weeks, Ken Weeks, Hesterman, Fabiilli, Puritan, Krasny, L.K. Management, and Wenger of Section 17(a)(2) and (2) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

114. Paragraphs 1 through 107 are hereby realleged and incorporated by reference.

115. Defendants PanWorld, Robert Weeks, Ken Weeks, Hesterman, Fabiilli, Puritan, Krasny, L.K. Management, and Wenger, directly and indirectly, in the offer and sale of securities, the common and preferred stock of PanWorld, by use of the means or instrumentalities of transportation or communication in interstate commerce or by use of the mails, have obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make a statement made, in light of the circumstances under which it was made, not misleading, or have engaged in transactions, practices, or courses of business which have been, and are operating as a fraud or deceit upon the purchasers of PanWorld stock.

116. By reason of the conduct described in paragraph 114, defendants PanWorld, Robert Weeks, Ken Weeks, Hesterman, Fabiilli,

Puritan, Krasny, L.K. Management, and Wenger have violated, are violating and, unless restrained and enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

FOURTH CLAIM

UNDISCLOSED COMPENSATION FOR STOCK PROMOTION - Violations by Fabiilli, Puritan, Krasny, L.K. Management, and Wenger of Section 17(b) of the Securities Act [15 U.S.C. § 77q(b)]

117. Paragraphs 1 through 107 are hereby realleged and incorporated by reference.

118. Defendants Fabiilli, Puritan, Krasny, L.K. Management, and Wenger, and each of them, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, published, gave publicity to, or circulated communications, which, though not purporting to offer a security for sale, described such securities of PanWorld for a consideration received or to be received, directly or indirectly from an issuer, in this case PanWorld, without fully disclosing such consideration and the amount thereof.

119. By reason of the conduct described in paragraph 117, defendants Fabiilli, Puritan, Krasny, L.K. Management, and Wenger have violated, are violating and, unless restrained and enjoined, will continue to violate Sections 17(b) of the Securities Act [15 U.S.C. §§ 77q(b)].

FIFTH CLAIM

SALE OF UNREGISTERED SECURITIES - Violations by Robert Weeks, Ken Weeks, Hesterman, Fabiilli, Puritan, Krasny, L.K. Management, and Wenger of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)]

120. Paragraphs 1 through 107 are hereby realleged and incorporated by reference.

121. From December 1989 and continuing to the present, Robert Weeks, Ken Weeks, Hesterman, Fabiilli, Puritan, Krasny, L.K. Management, and Wenger have directly or indirectly, singly or in concert, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer and sell securities through the use or medium of a prospectus or otherwise; or carried securities or caused securities to be carried through the mails or interstate commerce, by means or instruments of transportation, for the purpose of sale or for delivery after sale; and made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to buy securities through the use or medium of a prospectus or otherwise, without a registration statement having been filed or being in effect with the Commission as to such securities.

122. By reason of the conduct described in paragraph 120, Robert Weeks, Hesterman, Ken Weeks, Fabiilli, Puritan, Krasny, L.K. Management, and Wenger have violated, are violating, and un-

less enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

SIXTH CLAIM

ACTING AS AN UNREGISTERED BROKER-DEALER - Violations by Fa-biilli, Puritan, Krasny, and L.K. Management of Section 15(a)(1) of the Exchange Act [15 U.S.C. §78o(a)(1)]

123. Paragraphs 1 through 107 are hereby realleged and incorporated by reference.

124. From in or about January 1994 through May 1995, Fa-biilli, acting as a broker, has made use of the means and instrumentalities of interstate commerce and of the mails to effect, induce, and attempt to induce the purchase and sale of securities without being registered with the Commission as a broker in accordance with Section 15(a)(1) of the Exchange Act and when no exemption from registration as a broker was available.

125. From in or about January 1994 through May 1995, Puritan, acting as a broker, has made use of the means and instrumentalities of interstate commerce and of the mails to effect, induce, and attempt to induce the purchase and sale of securities without being registered with the Commission in accordance with Section 15(a)(1) of the Exchange Act and when no exemption from registration as a broker was available.

126. From in or about January 1994 through September 1995, Krasny, acting as a broker, has made use of the means and instru-

mentalities of interstate commerce and of the mails to effect, induce, and attempt to induce the purchase and sale of securities without being registered with the Commission as a broker in accordance with Section 15(a)(1) of the Exchange Act and when no exemption from registration as a broker was available.

127. From in or about January 1994 through September 1995, L.K. Management, acting as a broker, has made use of the means and instrumentalities of interstate commerce and of the mails to effect, induce, and attempt to induce the purchase and sale of securities without being registered with the Commission in accordance with Section 15(a)(1) of the Exchange Act and when no exemption from registration as a broker was available.

128. By reason of the conduct described in paragraph 123, Fabiilli, Puritan, Krasny, and L.K. Management have violated, are violating, and unless enjoined, will continue to violate Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

SEVENTH CLAIM

FALSE AND DELINQUENT FILINGS WITH THE COMMISSION - Violations by PanWorld, Robert Weeks and Hesterman of Sections 13(a) and 15(d) of the Exchange Act and Rules 13a-1, 13a-13, 15d-1, 15d-13, 12b-20 and 12b-25 [15 U.S.C. §§ 78m(a) and 78o(d) and 17 C.F.R. §§ 240.13a-1, 240.13a-13, 240.15d-1, 240.15d-13, 240.12b-20, 240.12b-25]

129. Paragraphs 1 through 107 are hereby realleged and incorporated by reference.

130. PanWorld has failed to file periodic reports with the Commission, filed such reports on an untimely basis, filed materially false periodic reports with the Commission, and filed such reports with the Commission that in addition to the information expressly required to be included in the report failed to include such further material information as was necessary to make the required statements not misleading.

131. Pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], Robert Weeks and Hesterman were controlling persons of PanWorld.

132. Pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], Robert Weeks and Hesterman without just cause hindered, delayed, and obstructed the making or filing of the PanWorld periodic reports that were delinquent or never filed as set forth in paragraphs 28 through 32.

133. By reason of the foregoing conduct, PanWorld, Robert Weeks, and Hesterman have violated, are violating, and unless enjoined, will continue to violate Sections 13(a) and 15(d) of the Exchange Act and Rules 13a-1, 13a-13, 15d-1, 15d-13, 12b-20 and 12b-25 [15 U.S.C. §§ 78m(a) and 78o(d) and 17 C.F.R. §§ 240.13a-1, 240.13a-13, 240.15d-1, 240.15d-13, 240.12b-20, 240.12b-25].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Find that the defendants, and each of them, committed the violations alleged.

II.

Enter an Order of Permanent Injunction as to each defendant, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, enjoining each defendant from further violations of the provisions of law and rules alleged in this complaint.

III.

Enter an Order directing defendants PanWorld, Robert Weeks, Ken Weeks, Hesterman, Fabiilli, Puritan, Krasny, L.K. Management, Wenger, Rita Wenger, Gilbert, and Canyon to account for, disgorge and pay over, as the Court may direct, all ill-gotten gains received or benefits in any form derived from the illegal conduct alleged in this complaint, together with pre-judgment and post-judgment interest as provided by law.

IV.

Enter an Order requiring defendants PanWorld, Robert Weeks, Ken Weeks, Hesterman, Fabiilli, Puritan, Krasny, L.K. Management, Wenger and Gilbert to pay civil penalties pursuant to Section

21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] in an amount to be determined by the Court.

V.

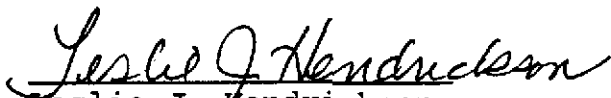
Enter an Order pursuant to Section 20(e) [15 U.S.C. § 77t(e)] of the Securities Act and Section 21(d)(2) [15 U.S.C. § 78u(d)(3)] of the Exchange Act unconditionally and permanently prohibiting Robert Weeks and Hesterman from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

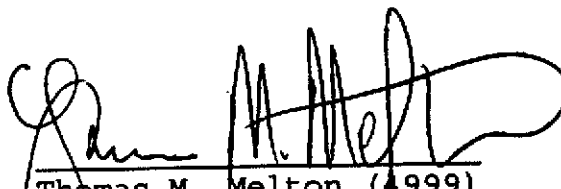
VI.


Grant such further equitable relief as this Court deems appropriate and necessary.

Dated:

Respectfully submitted,


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EXHIBIT 9

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. D-2049
DYNAMIC AMERICAN CORPORATION)
)

ADMINISTRATIVE PROCEEDING

PAGES: 700 through 962

PLACE: U.S. Securities and Exchange Commission
46 West 300 South
Salt Lake City, Utah

DATE: Thursday, July 13, 2000

The above-entitled matter came on for hearing, pursuant to notice, before JAMES T. KELLY, Administrative Law Judge, at 9:00 a.m.

APPEARANCES:

On behalf of the Securities and Exchange Commission:

THOMAS D. CARTER, ESQ.
U.S. Securities and Exchange Commission
1801 California Street, Suite 4800
Denver, Colorado 80202
(303) 844-1090

On behalf of the Respondents, K. Weeks and D. Hesterman:

DAVID W. PARSONS, ESQ.
42 Broadway, Suite 1101
New York, NY 10004
(917) 320-4801

On behalf of the Respondent, R. Weeks:

JAMES N. BARBER, ESQ.
Suite 100, Bank One Tower
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Sale Lake City, Utah 84101
(801) 364-6500

Diversified Reporting Services, Inc.
(202) 296-9626

1 JUDGE KELLY: It's Mr. Patten's prepared report --

2 MR. BARBER: Oh, yeah. I have no objection.

3 MR. PARSONS: No objection.

4 JUDGE KELLY: Admitted.

5 (Division's Exhibit No. 178 was
6 received into evidence.)

7 MR. CARTER: Thank you, Your Honor.

8 JUDGE KELLY: Off the record.

9 (Off the record at 11:16 a.m.,
10 and reconvened at 11:18 a.m.)

11 JUDGE KELLY: We're back on the record. Ms.
12 Achuff, please, raise your hand to be sworn as a witness.
13 Whereupon,

14 CARLEEN ACHUFF
15 was called as a witness and, having been first duly sworn,
16 was examined and testified as follows:

17 JUDGE KELLY: Thank you. Please, be seated.

18 DIRECT EXAMINATION

19 BY MR. CARTER:

20 Q Good morning, Ms. Achuff.

21 A Good morning.

22 Q Please, state your name and spell both your first
23 and the last name for the record.

24 A My name is Carleen Holloway Achuff, C-a-r-l-e-e-n,
25 Achuff is A-c-h-u-f-f.

1 Q Ms. Achuff, what's your occupation?

2 A I'm a staff accountant with the Securities and
3 Exchange Commission in Denver. My functional job title is
4 securities compliance examiner.

5 Q Compliance for what kind of companies?

6 A Investment company and investment advisors.

7 Q How long have you been with the Securities and
8 Exchange Commission?

9 A 16 years.

10 Q What's your educational background?

11 A I earned a bachelor's and master's degrees in
12 geology and have also taken college courses in accounting.
13 I'm sorry.

14 MR. PARSONS: Hold on. I can't hear you.

15 MR. CARTER: I'm sorry.

16 MR. PARSONS: Just trying to get her things up
17 here.

18 THE WITNESS: And college courses in accounting.

19 BY MR. CARTER:

20 Q Do you have any professional licenses?

21 A No, I do not.

22 Q Is geologist a professional license?

23 A Well, in some jurisdictions.

24 Q Okay.

1 A I'm a certified professional geological scientist
2 with the American Institute of Professional Geologists.

3 Q I consider that a license. Could you tell the
4 Court, beginning 16 years ago what your positions have been
5 with the SEC?

6 A I was hired as a geologist in 1984, promoted to the
7 senior geologist in '86, promoted to regional geologist in
8 '96. And I worked as a geologist for the Commission, up
9 until this past March. A portion of that work when I first
10 started was in what's termed the full disclosure program
11 which is reviewing registration statements filed by companies
12 -- small companies that want to go public. But throughout
13 that 16 year period, I was doing enforcement work.

14 Q And in terms of enforcement work, you did
15 investigations?

16 A Correct.

17 Q And what kind of investigations generally?

18 A Principally focusing on minerals, and oil, and gas
19 companies. Suspected incidences of false statements to the
20 public, misuse of investor proceeds.

21 Q In the course of your work -- your enforcement
22 work, have you personally worked on obtaining financial
23 records from banks, and broker dealers, and individuals?

24 A Yes.

1 Q Have you ever written subpoenas for financial
2 records?

3 A Oh, yes.

4 Q Have you been responsible for receiving financial
5 records or whatever materials are coming back?

6 A Yes, I have.

7 Q Okay. What -- generally what kind of materials
8 have you dealt with, from subpoenas?

9 A Documents that would show the names on an account,
10 account opening documents, periodic statements of accounts,
11 and then all of the debit and credit items to accounts. That
12 would be wire transfers, checks, other sorts of incoming and
13 outgoing funds.

14 Q Okay. You've been doing that for the last 16 years
15 basically?

16 A Portions of it, yes.

17 Q In the course of your working with these kinds of
18 financial records, do you work with -- do you prepare
19 summaries of information and data from those records?

20 A Yes, I do. I prepare spreadsheets using Excel,
21 which is a data -- or, pardon me, not a data base -- a
22 spreadsheet program.

23 Q And you're familiar with Excel?

24 A Yes.

1 Q And it's recognized as accurate and reliable in
2 producing summaries and spreadsheets?

3 A Oh, yeah. I think it's one of the most widely used
4 spreadsheet programs.

5 Q Have you ever testified in administrative
6 proceedings?

7 A Yes.

8 Q Have you ever testified before as a summary
9 witness?

10 A Yes. Yes, I have.

11 Q Okay. And by summary witness, you know what I
12 mean?

13 A I understand it to be -- yes, a witness --
14 basically a fact witness, summarizing facts.

15 Q All right. If you would look at the notebooks that
16 contain Division Exhibits 94, 134, and 169, maybe it might be
17 actually easiest to pull those out of those notebooks.

18 JUDGE KELLY: Off the record.

19 (Off the record at 11:25 a.m.,
20 and reconvened at 11:27 a.m.)

21 JUDGE KELLY: Back on the record.

22 BY MR. CARTER:

23 Q Ms. Achuff, are Division Exhibits 94, 134, and 169
24 schedules that you prepared in this case?

1 A They are.

2 Q And in overview, what -- well, what are the source
3 documents for -- maybe we ought to do them one at a time.
4 What are the source documents for Exhibit 94?

5 A The source documents, Exhibit 94, is a spreadsheet
6 of activity in the Stockton Limited account at Canadian
7 Imperial Bank of Commerce. And so the source documents are
8 account statements and debit and credit items for that
9 account.

10 Q All right. And Exhibit 134. What are the source
11 documents for that?

12 A 134 is a spreadsheet showing transactions in the
13 Hamilton Limited CIBC account. The source documents for that
14 -- for 134 then would be the statements and debit and credit
15 items for that Hamilton account.

16 Q For that bank account?

17 A That bank account, correct.

18 Q And then Exhibit 169 is what? How does it relate
19 to 94 and 134, Ms. Achuff?

20 A I prepared Exhibit 169 in an effort to kind of pull
21 together in one place information that I derived from the
22 brokerage and the bank accounts of both Stockton and
23 Hamilton. And so the source documents would be -- for the
24 brokerage accounts would be brokerage -- monthly brokerage
25 statements and related documents for both Hamilton and

1 Stockton's several accounts, and then the same CIBC bank
2 account documents that underlie Exhibits 94 and 134.

3 Q How did you obtain these source documents?

4 A Start with the brokerage documents -- there are
5 brokerage accounts maintained in the names of Stockton and
6 Hamilton in both the U.S. and Canada. For the U.S. accounts,
7 I sent subpoenas in the normal fashion that we do at the --
8 with the Commission. For the --

9 MR. BARBER: Well what is -- excuse me -- but
10 clarify what that is.

11 MR. CARTER: What normal is? The normal course?

12 MR. BARBER: She did it by subpoena?

13 MR. CARTER: Yeah.

14 MR. BARBER: Well --

15 BY MR. CARTER:

16 Q I'm sorry. Would you go back over that? How did
17 you get the brokerage records -- the broker dealer records?

18 A Okay. For the U.S. accounts, I sent subpoenas to
19 the broker dealers --

20 Q All right.

21 A -- and obtained the documents. Either to the
22 broker dealers or the clearing firms through which they
23 clear. For the Canadian accounts, it was necessary to go
24 through the process under a memoranda of understanding that
25 exists between the SEC, and the British Columbia Securities

1 Commission, and the Ontario Securities Commission.

2 It's a similar process. I wrote up basically a
3 subpoena. It was just administratively handled through the
4 memorandum of understanding. And then to finish your
5 question on the bank records, those I obtained pursuant to
6 subpoena, both for Stockton and Hamilton.

7 Q And are these underlying records in the courtroom
8 today, do you know?

9 A To the best of my knowledge, they are.

10 MR. CARTER: They're exhibits actually in the
11 Division's exhibit list, Your Honor. I haven't offered them,
12 but they're here and available to respondents.

13 JUDGE KELLY: Thank you.

14 BY MR. CARTER:

15 Q Now why don't we do this step by step? Can you
16 give just like a step-by-step breakdown of a general example
17 of how, for example, on Exhibit 134, you went about preparing
18 the schedule of Hamilton Limited's CIBC bank account?

19 A Exhibit 134 is arranged chronologically according
20 to the date for any given transaction on the statements for
21 the Hamilton account. And I simply went through the
22 statement noting items that were debits, items that were
23 credits, and then filled in the payee, and the payor
24 information, and any additional comments from the debit and
25 credit items themselves. So from the statement I did not

1 have the payee payor information. I simply had the dollar
2 amounts of a debit, or a credit, and the balance for the
3 account, and the date when that --

4 Q Okay. And then how did you get the payee payor?

5 A And then for the payee payor, I went to the
6 documents that were, for instance, photocopies of wire
7 transfers into or out of the account, photocopies of checks.
8 Things like bank fees, I think were noted on the statement
9 itself as being a bank fee. And so I simply filled in that
10 information as it related to the dollar amounts that I had.

11 Q All right. On -- still on 134 just as an example,
12 can you take the Court, and respondents, and myself through
13 how you wrote this line for the September 4, 1996, wire to
14 Maria Rosa Baez, for example, just as an example of how you
15 did this.

16 A Okay. On the statement itself with a statement
17 date of 9/4/96, there would be -- or there is a note that a
18 wire -- an outgoing wire was sent. The dollar amount is
19 shown, and then there is then a photocopy of an outgoing wire
20 from this account in the name of Maria Rosa Baez. And then,
21 as you see, over on the comment line, First Security Bank of
22 Utah, account number 0541027116 would be the receiving
23 institution and account as identified on the wire transfer
24 documentation.

1 Q So the wire transfer told you that that money was
2 going to -- or reflected as a record that that money was --
3 that wire was going to First Security Bank of Utah to a
4 certain account number?

5 A Correct.

6 Q Okay.

7 A And had that -- the name, Maria Rosa Baez.

8 Q And then the bates stamp numbers to the right of
9 that. What do those reflect?

10 A That series, as you can see the numbers are the
11 same throughout the column. That is the bates number series
12 that I or someone at my instruction stamped on the Hamilton
13 Limited CIBC account documents that I received.

14 Q Okay. And does that same thesis work all the way
15 through this exhibit 134 as to how you obtained things?

16 A Correct.

17 Q Okay. You didn't make any assumptions about who
18 these peoples names were?

19 A No. No, not at all.

20 Q And how large is the -- was the Hamilton bank
21 account records? Fairly substantial?

22 A Yeah. Three quarters of an inch, an inch thick.

23 Q Okay.

24 A You know, a hefty chunk.

1 Q And how about the Stockton Limited account? Was
2 that a substantial number of documents?

3 A Same thing and the same procedure that I followed
4 in -- that I described for Exhibit 134 was the procedure that
5 I followed for Exhibit 94.

6 Q Let me turn then to Exhibit 169. And the record
7 should reflect that I'm tendering to respondents and to the
8 Court right now a page of 169, that we would like to insert
9 in Exhibit 169, that reflects some recalculations and changes
10 that Ms. Achuff made, and she'll testify to that in a moment.

11 But I think that the Court should -- everybody ought to have
12 it as we're looking at this.

13 A Okay, and --

14 Q Let's turn to 169, Ms. Achuff.

15 A And Mr. Carter, in order to make those changes,
16 I'll need -- I don't have them memorized. I --

17 Q Oh, okay.

18 A -- will need a document.

19 Q Okay. Well, why don't you get -- here, let me --
20 let's just go along in this --

21 A Okay.

22 Q -- for a while, and we'll see how far we get before
23 we get to the changes.

24 A Okay.

1 Q And then we'll get that document. What is Exhibit
2 169, Ms. Achuff?

3 A Okay. As I said, this is intended as a summary
4 document to show the flow of Dynamic American stock into
5 various brokerage accounts, and then the sales or other
6 transactions involving those shares in those brokerage
7 accounts. And then the flow of money from the sale of
8 Dynamic American stock into the CIBC accounts of Stockton and
9 Hamilton and then the disposition of those funds out of the
10 CIBC bank accounts.

11 Q Okay. So Exhibit 169, in some ways, duplicates
12 some of the items in 94 and 134; is that right?

13 A Exactly. 94 and 134 are, if you will, source
14 documents for a portion of 169.

15 Q Okay. But 169 takes us back one or two steps
16 before the bank accounts; is that right?

17 A Correct.

18 Q Okay. Why don't you tell the Court what the first
19 step was then in preparing 169, the summary? How did you
20 know, for example, you know, where the shares were coming
21 from or who the, you know, how did these shares get issued?
22 How did you know that?

23 A Okay. The first step is to look at the Dynamic
24 American corporate resolutions, which would be the documents
25 authorizing new issuances of stock coming out of the treasury

1 -- company's treasury to however the recipient is. I think
2 that Commission's Exhibit 1 is a compilation that I made
3 during the investigative phase of this matter, reflecting
4 those corporate resolutions.

5 And so, for instance, looking at the first page of
6 Exhibit 169, which deals with Hamilton Limited, you see the
7 underlying heading, receipt of shares. We see the first line
8 on August 21st, 1996, five million shares reflected by
9 certificate number 66944, was issued in the name of Hamilton
10 Limited. And then that number 1122 in square brackets is a
11 copy of that certificate from the records of IDATA, Inc.,
12 Dynamic American's transfer agent.

13 Q So if we went to IDATA's records, which Mr.
14 Bogutski discussed yesterday and went to page 1122, we'd find
15 that certificate.

16 A Exactly. And I think that certificate is part of a
17 stapled together stack of pages that I would refer to as a
18 transfer agent item, and those are all of the documents in
19 the transfer records that relate to the issuance of that
20 share. And so I think, in fact, that item actually starts at
21 1120; 1122 is the actual certificate.

22 Q Do you know how voluminous the transfer agent
23 records were in this matter?

24 A They're quite voluminous. They fill --

1 Q Banker's box full, at least?

2 A Several -- easily -- yeah. A document storage box
3 full, I would say.

4 Q All right. Go on, please.

5 A Okay. So the first step then, as I say, is looking
6 at the corporate resolutions that authorize the issuance of
7 shares. Second step then, is to go to the transfer agent
8 records and find where those authorized shares are, in fact,
9 actually issued. The transfer agent records reflect two
10 things.

11 They reflect the initial issuance of the shares and
12 then they also reflect the cancellation of those original
13 certificates and the -- their replacement by other
14 certificates when the original shares are, for instance,
15 deposited into a brokerage account.

16 Q What happens in transfer agent records when the
17 original shares are deposited into a brokerage account, for
18 example?

19 A When the shares go into a brokerage account, the
20 broker dealer or the clearing agent for the broker deal, but
21 I'll just lump those together and call them a broker dealer.

22 When the shares go into a particular account at the broker
23 dealer, the broker dealer will then send that certificate
24 back to the transfer agent with instructions to issue a new
25 certificate in the name of the broker dealer or in the name

1 of the clearing firm for the broker dealer.

2 And that creates another transfer agent item --
3 another record in the transfer agent records that would show
4 the disposition of the original certificate. And that leads
5 you -- that's the way that you know where to go to find out
6 what happened to those shares.

7 Q All right.

8 A In the case of Hamilton, when we look at the second
9 underlined heading, delivery into broker accounts, you see
10 that on August 22nd, 1996, certificate 66944, that we just
11 looked at above, is delivered into Hamilton's account number
12 1139377-04 at Brink Hudson, which is a Vancouver, British
13 Columbia broker dealer.

14 Q How do you know that?

15 A How do I know which?

16 Q How do you know that Brink Hudson is a Vancouver
17 broker dealer?

18 A I could tell from the transfer agent records at
19 bate number -- no, I'm sorry, that's wrong -- bate number
20 1108, those are the -- that's the item that reflects the
21 delivery of those shares into the Brink Hudson account, and I
22 could see Brink Hudson's name on it, their address and all of
23 that. And so pursuant to the memorandum of understanding
24 between the Commission and the British Columbia Securities
25 Commission, I was able to obtain Hamilton's account documents

1 from Brink Hudson.

2 Q By subpoena -- MOU subpoena -- the MOU process.

3 A The MOU process -- whatever it is, yeah.

4 Q All right. And go on. Move along to what's the
5 next breakdown and how did you --

6 A Okay. So that gets the shares into a particular
7 brokerage account. The thing then is to look at the account
8 statements and other documents for that brokerage account.
9 That's the third underlined heading, brokerage transactions,
10 Hamilton account, Brink Hudson. And those are bate stamped,
11 again, by me or someone at my instruction as pages 79996
12 through 8094 inclusive.

13 And in that account, in a brokerage account you can
14 basically have four things that happen to shares. You can
15 either receive shares in, which is the case here, 10,000 --
16 or pardon me, ten million Dynamic American shares were
17 delivered into that account. You can buy shares. You can
18 deliver shares out, which is a transfer of shares out of the
19 account. Or you can sell shares. Those are the four things
20 basically that will change the share balance in a brokerage
21 account. And so that's what I looked at.

22 Q And that's what you broke down here. The buys --

23 A Correct, that --

24 Q -- the sells, and the deliveries?

1 A Correct.

2 Q All right.

3 A And that should actually reflect the receipt, I
4 suppose, of the ten million shares that we see in the lines
5 above. So ten million shares came in, Dynamic American
6 shares; 4,775,000 shares were sold out of the Hamilton/Brink
7 Hudson account; another 2,200,000 shares were delivered out
8 of the Brink Hudson account -- out of the Hamilton account to
9 an account in the name of Richard Gladstone at Canaccord.
10 Those shares covered short sales in the Gladstone account,
11 and the sale proceeds from those short sales were wired into
12 the Hamilton/Brink Hudson account on the same day that the
13 shares were transferred out.

14 Q Let me stop you there. How do you know that this
15 covered short sales by the Richard Gladstone account at
16 Canaccord?

17 A I obtained the account documents for the Gladstone
18 account, also pursuant to the MOU. Canaccord is a British
19 Columbia brokerage firm. So I obtained those account
20 documents as well, and by doing another spreadsheet of the
21 transactions in Dynamic American in that account, I could see
22 that at the point that this 2.2 million shares came in from
23 Brink Hudson, the Gladstone account was short, was -- had a
24 deficit of Dynamic American shares actually in the account to
25 cover the number of shares that had been sold.

1 And there are documents in the Brink Hudson account
2 records, that show that these 2.2 million shares are being
3 transferred to the Gladstone account against the receipt of
4 \$90,000 from the sale of those -- of the Dynamic American
5 shares that were short sold in the Gladstone account.

6 Q Okay. And so this total then is what?

7 A The \$385,247 is a total of the sales of Dynamic
8 American in the Hamilton/Brink Hudson account and the sales
9 in the Gladstone account that were covered by shares from the
10 Brink Hudson account.

11 Q Okay. And why did you include the \$90,000 in the
12 Hamilton account?

13 A Because the substance of the transaction, was that
14 the shares sold out of the Gladstone account came from the
15 Brink Hudson account. And the proceeds from those sales went
16 back to the Brink Hudson account, and so it made a little bit
17 of a detour on the way, but fundamentally the substance of
18 the transaction was that these were sales out of the Brink
19 Hudson account.

20 Q Out of the Hamilton account?

21 A The Hamilton account at Brink Hudson, right.

22 Q All right. And then what happens next with the
23 proceeds? Let me stop you for a second. As far as United
24 States broker dealers are concerned, isn't it a fact that
25 they are required by law to maintain certain documents?

1 A Yes, they are.

2 Q Okay. For a certain amount of time?

3 A For a certain amount of time in order to be
4 available for, among other things, the Commission's examiner
5 -- Securities Compliance examiners in the broker dealer area.

6 Q In your 16 years with the Commission, have you
7 looked at thousands of sheets of broker dealer account
8 statements?

9 A Yes, I would say so.

10 Q More than you care to remember?

11 A More than I care to think about. Yes.

12 Q And do shareholders rely on those statements for
13 their accuracy?

14 A Oh, absolutely.

15 Q All right. Go on to the delivery of sales
16 proceeds. I think it -- is that the next step?

17 A Well, just to finish off the transactions in the
18 brokerage account, there were no buys of Dynamic American
19 sale -- stock. There were deliveries of 5,225,000 shares out
20 of the Hamilton account to four other -- over three other
21 accounts as identified on Exhibit 169. The two -- just to
22 note -- the two million shares going to a Gladstone account
23 are in addition to the 2.2 million shares that I've already
24 talked about.

1 Q Up above. Okay.

2 A Right. So that takes care of the entire ten
3 million shares of Dynamic American stock that came into the
4 Hamilton account.

5 Q Okay. So where did the money go?

6 A Well, then we look down at the fourth underlined
7 heading, delivery of sales proceeds from Hamilton account
8 Brink Hudson into Hamilton account at CIBC. That's the
9 account that's reflected in Exhibit 134. Basically the Brink
10 Hudson account, had transactions -- the Hamilton account at
11 Brink Hudson had transactions in Dynamic American to the tune
12 of \$385,247, and in another company called Koala Capital
13 Corp., and \$103,580.66 from sales of Koala Capital Corp. were
14 also wired to the Hamilton CIBC account.

15 Q Okay. Let me stop you there.

16 A Sure.

17 Q Why did you include in this 103,000 in this portion
18 of the schedule? Why did you include in the Koala Capital
19 Corp. money?

20 A Because during the same period of time, what I was
21 concerned with in the next underlined item is the
22 distribution of proceeds out of the CIBC account.

23 Q Uh-huh.

24 A And the problem was that during the same period of
25 time, there was money coming into the CIBC account from sales

1 of both Dynamic American and Koala Capital Corp. And so I
2 couldn't really -- I had no basis for attributing outgoing
3 funds from the CIBC account to either Dynamic American or
4 Koala Capital.

5 Q There was a co-mingling of funds?

6 A Yes, exactly.

7 Q All right.

8 A So what I looked at, was the distribution of this
9 total of \$488,827.18 in sales proceeds derived from both
10 Dynamic American and Koala Capital Corp.

11 Q Okay. Let me just ask you, how -- what was the
12 record that showed you that the proceeds of the Hamilton
13 account at Brink Hunson -- Hudson, excuse me -- went into the
14 Canadian Imperial Bank of Commerce, CIBC?

15 A From the Brink Hudson documents, I had both
16 notations on the statements themselves, wire transfer to CIBC
17 Freeport, Bahamas, I think, was usually the way it read. And
18 I think I had copies of the wire transfer advices, which
19 showed monies going to CIBC from out of that account.

20 Q From Brink Hudson?

21 A From Brink Hudson.

22 Q Right.

23 A In the Brink Hudson documents.

24 Q Okay. Continue.

1 A Okay. So then in summary fashion on this first
2 page of Exhibit 169, I've shown the disposition of
3 \$480,018.69 out of the Hamilton account at CIBC. I would
4 presume that the remaining roughly 8,000 was left in the
5 account, the difference between that and the total amount
6 that was wired from Brink Hudson.

7 Q All right. And then going down to the distribution
8 of these sales proceeds, how did you get the names in the
9 left-hand column beginning with the Washington National
10 Limited?

11 A Okay. That would be reflected in Exhibit 134 as
12 I've described earlier in my testimony. The outgoing checks
13 or wires would show the payee.

14 Q Okay. And these are the -- from the bank records
15 of the CIBC?

16 A Correct.

17 Q That you received by subpoena?

18 A Correct.

19 Q Okay. Go ahead.

20 A And so I simply totaled the amounts going to the
21 various payees and summarize them in Exhibit 169.

22 Q All right. And then on the right-hand side,
23 there's a comment that Washington National Limited was a K.
24 Weeks corporation?

1 A Correct.

2 Q How did you know that?

3 A Robert E. Cordes testified to that effect. He also
4 provided --

5 MR. BARBER: Objection -- that name Cordes --

6 MR. CARTER: All right. Don't answer that -- well,
7 Your Honor, I'm sorry. You see -- your ruling.

8 JUDGE KELLY: How did you know -- what was the
9 question?

10 BY MR. CARTER:

11 Q How did you know that -- where did your information
12 come from to make the notation here that Washington National
13 Limited was a K. Weeks corporation?

14 A The response to my subpoena duces tecum by Robert
15 E. Cordes -- testimony and documents.

16 Q Okay. And you took Mr. Cordes' testimony?

17 A I did.

18 JUDGE KELLY: All right. So she got it from the
19 investigative testimony.

20 MR. PARSONS: Yes.

21 JUDGE KELLY: And you're objection is to that --

22 MR. PARSONS: That we will be objecting to the
23 admission of all of Mr. Cordes' testimony and the documents
24 derived therefrom.

1 JUDGE KELLY: All right.

2 MR. PARSONS: So Ms. Achuff can testify subject to
3 it being connected up and --

4 JUDGE KELLY: All right. That's fine. We'll leave
5 it like that then at this time.

6 BY MR. CARTER:

7 Q All right. And the other people down here, how did
8 you determine their names? In the same way -- it just came
9 off of Exhibit 134, it's the -- the names shown in the bank
10 records; is that right?

11 A As being the payees, yes.

12 Q Yeah. And the comments are things that you learned
13 from investigation or that are obvious on their face, such as
14 Ken Weeks Insurance Services?

15 A Exactly. Information that I obtained in the course
16 of the Commission's investigations of both Dynamic American
17 Corporation and PanWorld Minerals International, Inc.

18 Q All right. And things like Dannigers being a
19 furniture store in Salt Lake City believed to be for the
20 benefit of Ken Weeks' new house in Draper, Utah. That's --
21 what's the source for that?

22 A I called directory assistance and asked for
23 Dannigers. My recollection is that that's how I got the Salt
24 Lake connection to Dannigers. I knew -- or I had learned
25 information that led me to believe that Ken Weeks had a new

1 house in Draper, Utah during this period of time, and that's
2 the source for the notation over there.

3 Q Okay. Now let's move to the --

4 MR. CARTER: Can you get me 169? I don't know how
5 I get this screwed up. I'd like to take just a moment, Your
6 Honor. My exhibit is not correct.

7 JUDGE KELLY: Off the record.

8 (Off the record at 11:55 a.m.,
9 and reconvened at 11:56 a.m.)

10 JUDGE KELLY: On the record.

11 BY MR. CARTER:

12 Q Let's turn to the second page of Exhibit 169.
13 Beginning with this page and going through the end, what does
14 this reflect?

15 A The second through sixth pages of Exhibit 169 are a
16 similar analysis of Stockton Limited's receipt and
17 disposition of Dynamic American shares. Again, tracing the
18 flow through corporate resolutions, transfer agent records,
19 brokerage accounts, and the Canadian Imperial Bank of
20 Commerce, Stockton account.

21 Q And you did it in the same way as you just
22 discussed as to the first page by going to corporate
23 resolutions, transfer agents --

24 A Through MOU --

1 Q -- broker dealers, bank records of CIBC and -- is
2 that it?

3 A Correct.

4 Q Okay.

5 A And the documents were obtained in the same
6 fashion.

7 Q Okay. Why does the Stockton Limited -- why do
8 those pages take up so much more space?

9 A A couple of reasons -- Stockton received a lot more
10 stock than did Hamilton Limited and Stockton had a number of
11 brokerage accounts, whereas Hamilton Limited only had the
12 one.

13 Q All right. And up at the top how do you know that
14 Stockton Limited received 23,600 -- 23,650,000 shares? What
15 was the sources for that?

16 A Transfer agent records.

17 MR. BARBER: Pardon?

18 THE WITNESS: Transfer agent records.

19 MR. CARTER: I think we're at the stage where I
20 need to have you get your corrections, and we can go over the
21 corrections. Could we take a moment off the record for the
22 witness to get her --

23 JUDGE KELLY: Off the record.

24 (Off the record at 11:58 a.m.,
25 and reconvened at 11:59 a.m.)

1 JUDGE KELLY: On the record.

2 BY MR. CARTER:

3 Q Ms. Achuff, let's look at page five of six of
4 Exhibit 169.

5 A Right.

6 Q I've tendered to the Court and I've tendered to
7 respondents a new page five of six that has some handwriting
8 on it. Is that your handwriting?

9 A It is.

10 Q What does your handwriting reflect?

11 A As I was reviewing this page, I realized that I had
12 made an error in allocating sales proceeds in the Yorkton
13 account, the Stockton's -- Stockton's account at Yorkton
14 Securities in Vancouver and in the investor's -- one of the
15 investors associate's accounts that Stockton maintained. I
16 had made an error in allocating proceeds between sales of
17 Dynamic American and sales of another stock called Lanstar,
18 L-a-n-s-t-a-r, and so the handwritten notations and the
19 corrections that are on this page are my corrections to show
20 properly the allocation of monies going into the CIBC account
21 from the sale of Dynamic American stock, as opposed to the
22 sale of Lanstar.

23 Q All right. And so for example, on the far left of
24 page five, there is a column that says Michelle Martin, and
25 it --

1 A Oh --

2 Q -- previously stated that Ms. Martin received
3 \$884,970.88?

4 A Right. I'm sorry. And in addition in that one
5 instance, I inadvertently left out, it appears, one wire from
6 the Stockton CIBC account to Michelle Martin, and so the
7 corrected amount of money coming from CIBC -- Stockton's
8 account at CIBC to Michelle Martin is \$886,753.88.

9 Q So it's about \$2,000 difference?

10 A Right. Right. Missed a little bit of it.

11 JUDGE KELLY: But the name Michelle Martin is now
12 crossed out.

13 MR. CARTER: It's not crossed out, is it?

14 THE WITNESS: No, that was a mistake. I circled it
15 to try and undo my cross-out. I meant to cross out the
16 dollar amount, and I crossed out her name by mistake. But
17 the name should still be there.

18 BY MR. CARTER:

19 Q So Michelle Martin -- your testimony is that your
20 summary is that Michelle Martin received \$886,753.88 from
21 sales of stock out of the Stockton account?

22 A Correct. As reflected in Exhibit 94.

23 Q All right. And the actual sales of Dynamic stock
24 through the Stockton Limited account should total up to
25 \$3,363,289.12 rather than 3,409,357.92; is that correct?

1 A It's not the sales of stock. Those are --

2 Q The proceeds.

3 A -- your dollar amounts are correct. Those are
4 proceeds from the sale of Dynamic American stock flowing into
5 Stockton's CIBC account.

6 Q All right. And have you totaled the proceeds of
7 stock -- I'm sorry -- the proceeds of Dynamic American stock
8 sales made by the Hamilton account and the Stockton account?
9 Have you totaled up those two things --

10 A I have --

11 Q -- so that it just reflects sales of Dynamic stock
12 rather than Lanstar or Koala Capital?

13 A Yes, I have.

14 Q And what is that figure of this income?

15 A That figure is \$3,748,536.12.

16 Q Thank you.

17 MR. CARTER: Where's that shown?

18 MR. BARBER: Is that over here?

19 JUDGE KELLY: No, just in her testimony. It's just
20 a total.

21 THE WITNESS: Yeah, that total is -- derives
22 directly from this amended, or whatever the term is, copy of
23 Exhibit 169.

24 BY MR. CARTER:

1 Q Right. It derives from the figure on the front
2 page, does it not --

3 A For Hamilton.

4 Q -- of \$385,247 in proceeds from the sales of shares
5 in Hamilton's account plus the new figure of --

6 A Three million --

7 Q 3,363,289. You totaled those two.

8 A Correct.

9 Q Thank you. Now in addition to having subpoenaed
10 all of these records for this summary schedule, did you
11 subpoena the bank records of David Hesterman?

12 A I subpoenaed records of a -- an account in the
13 names of David, Becky and Barbara Hesterman at First Security
14 Bank of Utah.

15 MR. CARTER: And that, Your Honor, is -- and
16 counsel, is Division Exhibit 163 which was admitted
17 yesterday.

18 MR. BARBER: 169?

19 MR. CARTER: 163.

20 MR. BARBER: Yeah.

21 BY MR. CARTER:

22 Q Did you also subpoena the bank records of Michelle
23 Martin?

24 A I did at four -- pardon me -- five banks. Two of
25 them have now combined, so they're now actually four banks.

1 Q All right. And did you also -- and those records,
2 to the extent that they've been made exhibits here rather
3 than just being in the summary, and I don't intend to offer
4 them, are records at Exhibit 161. Actually, maybe I ought to
5 offer them. Did you also subpoena the records of Ken Weeks
6 or Ken Weeks, Michelle Martin?

7 A One of the accounts, an account at City Bank is,
8 according to the account opening card, the signature cards,
9 is jointly held by Michelle Martin and Ken Weeks.

10 Q Okay. And that is at Division Exhibit 158. Did
11 you also personally subpoena the records -- bank records of
12 Ken Weeks Insurance Company, or wires going into Ken Weeks
13 Insurance?

14 A I subpoenaed statements and debit and credit items
15 for Ken Weeks Insurance Services account.

16 Q And that's at Exhibit 159, the wire transfers from
17 CIBC to Ken Weeks Insurance. I would -- did you also in --
18 subpoena, in this investigation, materials from Management
19 and Service Company, Limited or MASCO?

20 A Yes, I did.

21 Q Okay.

22 MR. CARTER: And for the record, those are Exhibits
23 84 through 95, 98 through 112, 115 through 133, and 156 --
24 Exhibit 156.

1 MR. CARTER: At this time, I'm going to offer
2 Division Exhibits 94, 134, and 169 as amended. And, although
3 I think that -- I'm also going to offer Exhibits 161, the
4 Michelle Martin account, 158, the Ken Weeks, Michelle Martin
5 bank records, and 159, the Ken Weeks Insurances wires from
6 CIBC. And I think, we'll wait until tomorrow to -- we'll
7 discuss the Cordes matter later today or tomorrow.

8 JUDGE KELLY: All right. So you're offering the
9 three summary exhibits plus 161, 158, and 159?

10 MR. CARTER: That's correct, Your Honor.

11 JUDGE KELLY: Okay. Ruling is deferred pending
12 cross-examination.

13 MR. CARTER: That's all I have.

14 JUDGE KELLY: We'll break for lunch.

15 MR. CARTER: Thank you.

16 JUDGE KELLY: Off the record.

17 (Off the record at 12:07 p.m.,
18 and reconvened at 1:10 p.m.)

19 JUDGE KELLY: We're back on the record.

20 MR. CARTER: Your Honor, I had finished with this
21 witness, but then Ms. Achuff reminded me that I had requested
22 that she try to make as good a breakdown by Respondent as she
23 could, and she's finished that over the lunch hour, and I'd
24 like to just ask a couple of questions of her. These would
25 be the breakdown of receipt of proceeds.

1 JUDGE KELLY: Fine.

2 MR. BARBER: That's fine.

3 JUDGE KELLY: Go ahead. Sit down.

4 BY MR. CARTER:

5 Q Ms. Achuff, were you able in summarizing this --
6 these materials or taking these summarized materials from the
7 exhibits, the summary exhibits to break down who got how much
8 from -- these would be the three respondents remaining in
9 this case?

10 A I could make an attempt to do so, yes.

11 Q Okay. And just in a brief overview, how did you do
12 that?

13 A Primarily starting from Exhibit 169 and looking at
14 the summaries of the distribution of sales proceeds out of
15 the two CIBC accounts, Stockton's and Hamilton's, which are
16 shown on pages one, five, and six of Exhibit 169 -- starting
17 mainly from those to show monies coming directly to the
18 respondents, or entities, or persons associated with them --
19 from those two accounts.

20 Then in addition, there's a substantial amount of
21 money that flows to an entity called Washington National
22 Limited out of both Stockton and Hamilton. Looking at the
23 Washington National Limited bank account records from it's
24 account at CIBC, which I obtained pursuant to subpoena, I
25 could then attempt to do the same breakdown of monies going

1 to the respondents, and persons, and entities associated with
2 them. So I combined those three breakdowns, Stockton,
3 Hamilton, and Washington National, and came up with a total
4 for each respondent.

5 Q All right. And as to the respondent, Ken Weeks,
6 what was your total of stock sale proceeds received by Mr.
7 Weeks, to the best of your ability to break this down?

8 A \$1,616,072.33.

9 Q All right. And to -- as to respondent, Robert
10 Weeks, what specifically can you tie to Mr. Weeks' in receipt
11 of proceeds?

12 A \$53,900.

13 Q All right. And then as to the two Weeks'
14 respondents, Ken and Bob together, how much did they receive
15 in, either jointly or in manners in which you were unable to
16 determine how to separate it out?

17 A Two hundred --

18 MR. BARBER: That's not relevant, Your Honor.
19 She's given us the total for the individuals. Just another
20 effort to paste them together.

21 JUDGE KELLY: Well, this is going to be an
22 important area.

23 MR. BARBER: Yes, it is. That's why I'm objecting.

24 JUDGE KELLY: Well, I -- it is certainly a
25 legitimate area for you to cross-examine on, and it's

1 something that if you don't cross-examine on, I'm going to
2 look very carefully at. But I do want to hear what she has
3 to say.

4 MR. BARBER: All right.

5 JUDGE KELLY: Go ahead.

6 THE WITNESS: The amount attributed jointly to Ken
7 and Bob Weeks, in addition to the amounts that I've just
8 testified to, is \$278,794.54.

9 BY MR. CARTER:

10 Q Okay. And does that also derive from Division
11 Exhibit 169?

12 A 169 and the Washington National Limited bank
13 records, yes.

14 Q Okay. Could you go through the items that you
15 attribute to both Kenneth and Robert Weeks jointly and tell
16 the Court where they come from?

17 A Yes.

18 Q Can you do that?

19 A From the Stockton account at Canadian Imperial Bank
20 of Commerce, \$162,500 going into Augusta National Trust of
21 which the trustee is Ginger Monsen, who is the sister of Ken
22 and Bob Weeks. \$10,000 going to Draper Rehabilitation and
23 Care Center. It was my assumption that that was related to
24 care for Gray Weeks, the father of Ken and Bob Weeks. \$3,000
25 going to Kay Wyler, w-y-l-e-r, who is another sister of Ken

1 and Bob Weeks. Out of the Hamilton account at CIBC,
2 \$3,294.54 going to Larkin Mortuary, again an expense that I
3 took to be related to Gray Weeks.

4 Q And therefore took --

5 A And therefore --

6 Q -- both Bob and Ken Weeks.

7 A Correct. I couldn't make an allocation between
8 the two of them. And then, out of the Washington National
9 Limited account, another 41,500 going to Augusta National
10 Trust. And 8,500 going to an entity called Insurance Trust,
11 which is a business, which I understand to be jointly owned
12 or controlled by Ken and Bob Weeks. And that's the total.

13 Q And that's how you arrived at the total of
14 278,794 --

15 A 54.

16 Q -- and 54 cents.

17 A Correct.

18 Q Okay. Thank you. Now with respect to respondent,
19 David Hesterman, how much did you ascertain that he got out
20 of these total proceeds?

21 A \$971,700 and no cents.

22 Q Okay. And again, that relates back to your three
23 summary exhibits?

24 A Correct.

1 Q And it --

2 A Actually, in this case, only to the Stockton and
3 Hamilton summary exhibits. I didn't identify monies coming
4 from Washington National Limited.

5 Q And then, did you have a category for funds that
6 went to people or entities that you couldn't decide whether
7 it was Ken Weeks, Bob Weeks, or David Hesterman, but that it
8 went to entities that was -- were related somehow to all
9 three?

10 A Yes, I did.

11 MR. BARBER: To whom?

12 MR. CARTER: To all three of the Respondents.

13 MR. BARBER: Well, without some foundation, Your
14 Honor, I'll object to the point of that question.

15 JUDGE KELLY: Yeah, I'd like to know what you're
16 talking about. You talking about money going to other
17 entities. I take it that you're looking to identify by name
18 those entities?

19 MR. CARTER: Yes, Your Honor.

20 JUDGE KELLY: All right. And then some other
21 testimony in the record will link up the respondent to those
22 entities?

23 JUDGE KELLY: I believe so, Your Honor.

24 JUDGE KELLY: All right. Well go ahead. Let's get
25 the entities.

1 BY MR. CARTER:

2 Q Ms. Achuff, can you tell us where you got the
3 figures that you attributed to all three respondents jointly?

4 A Okay. The amount that I attribute to all three
5 respondents jointly, in addition to the monies that I've
6 already stated, that amount is \$272,847.02. That breaks down
7 as -- from the Stockton account, payments to American Express
8 totaling \$90,909.96, payments to Discover Card totaling
9 \$4,885. Out of the Hamilton CIBC account, payments to
10 American Express totaling \$2,854.17, and out of the
11 Washington National account, payments to American Express
12 totaling \$24,197.89. And a payment of \$150,000 to the Nathan
13 Drage trust account. Nathan Drage is the corporate attorney
14 for Dynamic American Corporation.

15 Q Do we know -- do you know what the account number
16 is on the American Express cards that you're attributing
17 these --

18 A As I sit here right now, I don't --

19 Q I mean, is it on --

20 A -- have a recollection of that.

21 Q Is it on some document that's in evidence? This
22 would tie back in to Exhibit 130; is that correct.

23 A It -- yeah, if there is anything, it would be in
24 Exhibit 134 and Exhibit 94 and --

1 Q Well, or the base documents -- the source
2 documents --

3 A Or the -- pardon me -- the source documents
4 underlying.

5 Q -- which are Exhibits 130 and 92.

6 A Yes. I believe actually for Hamilton and Stockton
7 there are two or three exhibits for each one that I would've
8 been relying upon.

9 Q All right. And what would those two or three
10 exhibits have been.

11 A If I can refer to a document, I can tell you.

12 Q You want the exhibit list or something else?

13 A The exhibit list or some notes that I made of -- .
14 I'm sorry -- 92 and 130. That's correct. I was getting it
15 confused with brokerage account related exhibits.

16 Q So Exhibits --

17 A 92 and 130 as you said.

18 Q -- have the underlying documents that would show
19 the American Express account numbers?

20 A If those numbers are there, that's where they would
21 be.

22 Q That's where they'd be.

23 A I don't seem to have written them on Exhibit 94 or
24 Exhibit 134. It would generally be my practice to do that if
25 they were there, so I may not have the actual account number.

1 MR. CARTER: That's all I have.

2 JUDGE KELLY: Let me see if I understand this
3 testimony. I mean, I've just done a very quick calculation
4 of all this, but when I add all these numbers up, I get
5 something less than 3.2 million, which is a smaller sum than
6 the figure in your pre-hearing brief and a smaller sum than
7 the figure from this morning. Am I correct in that?

8 THE WITNESS: The 3.3 million figure, it's smaller
9 than that?

10 JUDGE KELLY: Yeah.

11 THE WITNESS: Yeah, the difference between this
12 3,193,000 total, from what I've just testified to, those are
13 the monies going just to the respondents. The 3,300,000
14 number is all proceeds coming out of the Stockton and
15 Hamilton accounts, so that would include recipients other
16 than the respondents.

17 JUDGE KELLY: Okay.

18 MR. CARTER: But for the benefit of those
19 respondents, we believe.

20 JUDGE KELLY: Well, you're going to make an
21 argument --

22 MR. CARTER: Yes.

23 JUDGE KELLY: -- that it ought to be attributed to
24 them.

1 MR. CARTER: Correct, Your Honor.

2 JUDGE KELLY: All right. Thank you very much.

3 Cross-examine?

4 MR. BARBER: I'm perhaps more confused than the
5 Court about this last segment.

6 JUDGE KELLY: Well, are you going to go for it?
7 Are you going to --

8 MR. BARBER: Oh, yeah, I'm going to go for it.

9 JUDGE KELLY: All right.

10 MR. BARBER: That was not just an editorial.

11 CROSS-EXAMINATION

12 BY MR. BARBER:

13 Q You said that there were other expenditures that
14 you -- I think your language was, were related to all three
15 of the defendants. Is that the category you've --

16 A The last category?

17 Q Yeah.

18 A The last category was one that I attributed to all
19 three of them collectively, not feeling that I had the
20 ability to separate out among the three respondents.

21 Q All right. And let me ask some questions to you
22 about that. There's \$150,000, more than half of that money
23 was payable to the Nathan Drage trust account?

24 A Correct.

1 Q You knew, did you not, that he was the counsel for
2 Dynamic American Corporation?

3 A Yes, I believe I just testified to that.

4 Q All right. Did you ever develop any information to
5 suggest that he represented Robert Weeks?

6 A Only insofar as it appeared Mr. Weeks was connected
7 with Dynamic American. I mean, I -- that he was counsel for
8 Robert Weeks?

9 Q Yeah.

10 A No.

11 Q Or -- and do you know any other relationship
12 between Robert Weeks and Nathan Drage?

13 A No.

14 Q How is it then that you assume and attribute money
15 paid to Nathan Drage, as having been paid for or on behalf of
16 Robert Weeks?

17 A I have seen payments coming out of the Nathan Drage
18 trust account to pay -- I can recall at the moment, Alan
19 Burton. There was at least one check to Alan Burton, so
20 payments related -- that appeared to me to be related to
21 Dynamic American Corporation.

22 Q Okay. So these payments, the 150,000, rather than
23 being attributed to Robert Weeks, ought to be attributed to
24 Dynamic American, shouldn't it?

1 A Well --

2 MR. CARTER: That -- I think that's argument. I
3 don't think that's --

4 MR. BARBER: That's proper cross.

5 JUDGE KELLY: No. This is exactly the point. And
6 this is the weak spot of your presentation. Now we do have
7 Mr. Burton's testimony, he never got more than \$8,000, I
8 believe. But you've got to put it in the pockets of the
9 respondents. Putting it in Nathan Drage's pockets doesn't
10 close the loop for disgorgement purposes.

11 MR. CARTER: All right. Your Honor, I think that
12 there are -- Mr. Bogutski, for example, testified yesterday
13 that IDATA transfer agent got paid out of Nathan Drage's
14 account.

15 JUDGE KELLY: Fine. Show me that those are not
16 legitimate corporate expenses, though.

17 MR. CARTER: All right. I'll brief it, Your Honor.

18 JUDGE KELLY: I mean, that's where I'm coming from.

19 MR. CARTER: All right.

20 MR. BARBER: Thank you, Your Honor.

21 BY MR. BARBER:

22 Q So you -- maybe I can truncate this by merely
23 asking you this: do you have any evidence to support any
24 claim that Robert Weeks got a cent out of this \$150,000 that
25 was paid to Nathan Drage?

1 A Present in the courtroom, no, I do not.

2 Q Well, do you have it anywhere else?

3 A Among the documents that I've subpoenaed or
4 documents of the Nathan Drage trust account, which would show
5 the distribution of monies coming out of that account.

6 Q Okay. Now listen to my question. Is there any
7 evidence that you have at all that any of this money that was
8 paid to Nathan Drage was secondarily paid by him to Robert
9 Weeks?

10 A If that evidence exists in my --

11 Q That's not what I asked you.

12 A I'm sorry, sir. I --

13 Q Do you have any such evidence?

14 A If that evidence exists, it is in the Nathan Drage
15 trust account bank records, which I do not have memorized and
16 which I do not have here.

17 Q I know. Now listen to the question again.

18 MR. CARTER: Your Honor, he's arguing with the
19 witness. I think she's answered the question.

20 JUDGE KELLY: Yeah, I do understand that she
21 doesn't have them, but this is the time and the place to
22 present them. Not some day in the future and not in a brief.
23 Now is the time to present the evidence to put this money in
24 these respondents' pockets, if you've got the proof. If you
25 don't or if you're asking me to make an inference, fine. But

1 this is what I had a problem with in your pre-hearing brief,
2 and why I asked for it very early on in this case. There is
3 no such thing, as I understand it, about joint and several
4 liability for disgorgement sustained at the Court of Appeals
5 level.

6 MR. CARTER: Your Honor, there are several
7 Commission cases, Sky Scientific and several other, and Court
8 of Appeals cases that do, in fact, sustain the thesis of
9 joint and several liability for a fraud like this. There is.

10 JUDGE KELLY: First of all, I'm not aware of any
11 Commission opinion in Sky Scientific. I'm aware of
12 several --

13 MR. CARTER: Well, initial decision by an ALJ.

14 JUDGE KELLY: I'm aware of several settlements in
15 Sky Scientific, and I'm aware of an initial decision on
16 appeal to the Commissioners. I'm talking about Court of
17 Appeals decisions saying, yes, joint and several liability
18 for disgorgement amounts. And that's why this is an area
19 that deserves some careful attention in the record.

20 MR. CARTER: Securities and Exchange Commission
21 versus Hughes Capital, Your Honor. Cite is 124 Fed. Third,
22 449 and that is Third Circuit, 1997, United States Court of
23 Appeals.

24 JUDGE KELLY: Okay. What did they do?

1 MR. CARTER: I beg your pardon?

2 JUDGE KELLY: What did they do?

3 MR. CARTER: Quote, page 449, Courts have held the
4 joint and several liabilities appropriate in securities cases
5 when two or more individuals or entities collaborate or have
6 close relationships in engaging in the illegal conduct,
7 citing First Jersey Securities.

8 In the instant case, the defendants all
9 collaborated in a single scheme to defraud Hughes' investors
10 through the bogus initial public offering and the subsequent
11 sale of warrants. They enjoyed a quote close relationship
12 with each other through their connection to Hughes, the other
13 corporations used in the scheme and the nominee accounts used
14 to perpetuate the scheme.

15 The burden is on the tortfeasor to establish that
16 the liability is capable of apportionment, citing Alcan case.

17 Generally apportionment is difficult or even practically
18 impossible because defendants have engaged in complex and
19 heavily disguised transactions citing CFTC versus the
20 American Board. Very often defendants move funds through
21 various accounts to avoid detection, use several nominees to
22 hold securities, or improperly deprive profits or
23 intentionally fail to keep accurate records and refuse to
24 cooperate with investigators in identifying the illegal
25 profits.

1 Hence, the risk of uncertainty should fall on the
2 wrongdoer whose illegal conduct created the uncertainty
3 citing First City Financial Corp.

4 JUDGE KELLY: Okay. Thank you. Off the record.
5 (Off the record at 1:31 p.m.,
6 and reconvened at 1:32 p.m.)

7 JUDGE KELLY: We're back on the record. During the
8 period of time we were off the record, the counsel for the
9 Division of Enforcement showed me the case of SEC versus
10 Hughes Capital in the Third Circuit, 1997, discussing joint
11 and several liability for disgorgement amounts, and we had a
12 brief discussion off the record on that. And counsel is now
13 going to develop the record, as he sees fit, on the ability
14 or inability to a portion alleged disgorgement amounts; is
15 that right?

16 MR. BARBER: That's correct.

17 JUDGE KELLY: Go ahead.

18 MR. BARBER: Thank you, Your Honor.

19 BY MR. BARBER:

20 Q I'm going to try it one more time, Ms. Achuff. Do
21 you have any evidence -- let me strike it again. Have you
22 seen, to your recollection, any evidence that any of the
23 \$150,000 paid to Nathan Drage was ever paid by him to Robert
24 Weeks?

1 A I would have to refresh -- I do not have a current
2 recollection, no. I would have --

3 Q All right. That's the answer. You don't have
4 anything in your mind at this moment; is that correct?

5 A Correct.

6 Q All right. Can you go back to Exhibit 130, I
7 believe it is, that Mr. Carter has alluded to?

8 MR. CARTER: I think it's 134 that we were dealing
9 with, isn't it?

10 MR. BARBER: Well, maybe so.

11 THE WITNESS: My summary, sir?

12 MR. BARBER: I'm looking at whatever document you
13 have that you believe may contain the AMEX numbers and
14 Discovery Card --

15 MR. CARTER: Oh --

16 MR. BARBER: -- accounts numbers. I think that was
17 130 that you attributed jointly to all three of these
18 respondents.

19 MR. CARTER: Your Honor, may I approach the
20 witness? We've tagged some of these pages from Exhibit 130.

21 JUDGE KELLY: Off the record.

22 (Off the record at 1:34 p.m.,
23 and reconvened at 1:35 p.m.)

24 JUDGE KELLY: We're back on the record. All right.
25 The witness is looking at Division Exhibit 130.

1 BY MR. BARBER:

2 Q And as you're browsing through that document, the
3 first one I'm going to ask you about is the first one you
4 talked about, which is a payment of \$90,000 to American
5 Express.

6 A Well, no, sir. Those are payments totaling 90,000.

7 Q Oh, I see.

8 A There is no single payment with that payment.

9 Q There was not a single payment?

10 A Correct.

11 Q Okay.

12 (Pause.)

13 JUDGE KELLY: Is there a question pending or is the
14 witness looking for something?

15 THE WITNESS: I was not aware there was a question
16 pending.

17 MR. BARBER: There's not.

18 JUDGE KELLY: Okay. Go ahead.

19 BY MR. BARBER:

20 Q But I will now address when -- are you prepared to
21 proceed on the basis of whatever's there?

22 A I believe so, yes.

23 Q Do you have the AMEX account number for any account
24 into which any component of this \$90,000 was paid?

1 A If I do, it will be reflected in Exhibits 164 and
2 94, which I'm consulting at this time.

3 Q And what are the numbers of those accounts?

4 A The accounts numbers at CIBC?

5 Q No, the --

6 A Or the account --

7 Q -- account numbers at AMEX?

8 A I have not said at the moment that there are any.
9 I'm looking to see, sir.

10 Q And for consideration, while you're looking for
11 those, I will address the next question which is, whether you
12 have done any investigation with AMEX or otherwise to
13 ascertain the names in whose those accounts are registered?

14 A I have not.

15 Q Well, maybe we can cut this short. Do you know the
16 identity of the individual in whose name any of these
17 accounts, representing AMEX payments that you've discussed,
18 were made?

19 A I do not.

20 Q Then I take it I can infer from that, that you
21 don't have anything -- any evidence to support the claim that
22 any of those accounts are accounts of Robert Weeks?

23 A Correct.

24 Q All right.

1 JUDGE KELLY: I don't want to cut the witness
2 short. If you're still looking at your charts for a specific
3 account number, let me know. But if you've --

4 THE WITNESS: I've --

5 JUDGE KELLY: -- decided that there is no such
6 information, just let us know.

7 MR. BARBER: I'm sorry. I didn't mean to cut her
8 off, Your Honor.

9 THE WITNESS: Let me just take a moment of the
10 Court's time and make sure.

11 (Pause.)

12 THE WITNESS: Okay. The CIBC bank documents do not
13 reflect account numbers for American Express or Discover
14 Card.

15 BY MR. BARBER:

16 Q All right. I guess the obvious question follows.
17 And that is, what is the basis of your conclusion that the
18 payment of these sums is attributable to the three
19 respondents jointly?

20 A It is an inference based on the apportionment of
21 other monies coming out of the accounts -- of the CIBC
22 accounts and augmented by past -- information that I
23 previously collected in the course of the PanWorld Minerals
24 International Commission investigation, which showed abundant
25 use of American Express cards, in particular, those belonging

1 to -- or in the name of Barbara Hesterman.

2 Q All right. So that's some evidence you developed
3 in another matter and not this case at all; is that correct?

4 A Correct.

5 Q Now insofar, as your assumption that this money
6 should all be jointly attributed to the three respondents, I
7 presume you meant equally.

8 A I did not make a presumption but that would be one
9 way of doing it, certainly.

10 Q Well, did you have another intention?

11 A No. That was the point. I could not make a
12 separate allocation.

13 Q All right. If you look at the -- your other
14 tallies about the respective share of proceeds received by
15 these respondents, there is a grossly disproportional receipt
16 ledger, isn't there?

17 A I'm sorry. I'm not --

18 Q Well, as I understand your testimony, Robert Weeks
19 got \$53,000 in change.

20 A 53,900, correct.

21 Q Kenneth Weeks got a \$1,700,000 in change.

22 A 1,616,000 --

23 Q Uh-huh.

24 A -- 72.33, yes.

1 Q And Mr. Hesterman got a million -- I mean, 987 was
2 it?

3 A 971,700.

4 Q Yes. That is not an equal apportionment of
5 receipts, is it?

6 A That's correct.

7 Q And the percentages applied on that basis would
8 suggest that Robert Weeks is probably the recipient, if your
9 assumption even holds, of less than five percent of the
10 money; is that correct?

11 A If you apply that ratio analysis, yes.

12 Q Well, that's one of the things you said you applied
13 in suggesting joint apportionment of this money, isn't it?

14 A You mean --

15 Q You just said that.

16 A No, sir. I didn't apply any ratio analysis.

17 Q All right. Well, it's clarified now. Now, Ms.
18 Achuff, you haven't been here during the trial, but you said
19 that there were \$278,794, I believe is the figure, that you
20 attributed to Weeks in the plural.

21 A Ken Weeks and Bob Weeks, yes.

22 Q Bob Weeks and Ken Weeks.

23 A Correct.

24 Q Would your conclusion that that money ought to be
25 jointly attributed be changed, if you were aware that we have

1 had a witness at trial and whose testimony is unrebutted the
2 Augusta National Trust is a trust administered solely by
3 Kenneth Weeks and not Robert Weeks?

4 A Yes, that would kick that money over into the Ken
5 Weeks total.

6 Q And that would account for about 193 -- \$194,000,
7 would it not, of that 274?

8 A Whatever the totals are for Augusta National Trust,
9 right.

10 Q Well, it's 152, 5, plus 41, 5. That's \$194,000, is
11 it not?

12 A Sorry -- yes.

13 Q So if the Court believes from the testimony of the
14 witnesses that that is money that was for the benefit of
15 Kenneth Weeks and not Robert Weeks, you'd have to take that
16 out of the joint attribution category, correct?

17 A Certainly.

18 Q All right. You've indicated that 10,000 Draper
19 Rehab. is the Weeks' dad, that the Larkin Mortuary was to
20 bury him under -- at his unfortunate demise, correct?

21 A Yes.

22 Q Would your conclusion that \$278,794 ought to be
23 jointly attributed to Robert and Kenneth Weeks be changed, by
24 the evidence of witnesses who have testified, I believe, that
25 Insurance Trust is a business maintained by Kenneth Weeks and

1 not Robert Weeks?

2 MR. CARTER: Your Honor, I'm going to object. I
3 believe that misstates the record. I -- my recollection of
4 the testimony is that Bob Weeks, on the first day, said that
5 Insurance Trust was his business, because Ken hasn't
6 testified.

7 JUDGE KELLY: I honestly don't remember what the
8 state of the record is on that issue from Robert Weeks'
9 testimony.

10 MR. BARBER: I'll go at it another way.

11 JUDGE KELLY: All right.

12 BY MR. BARBER:

13 Q Have you examined any account documents of
14 Insurance Trust?

15 A Yes.

16 Q Whose the signatory on that account?

17 A As I sit here today, I do not have a recollection
18 of that.

19 Q Could you ascertain that from records that you have
20 in your possession, and let us know, perhaps, by the end of
21 the day?

22 A By the end of the day?

23 Q Yeah.

24 JUDGE KELLY: Is that yes, you can?

1 THE WITNESS: Yeah -- yes, I can. I'm sorry, Your
2 Honor.

3 MR. BARBER: May I supplement the records with
4 whatever she comes up with, Your Honor?

5 JUDGE KELLY: Yeah, when we take a break, she can
6 look at that.

7 MR. BARBER: Okay.

8 JUDGE KELLY: Is that all right?

9 MR. BARBER: Absolutely.

10 JUDGE KELLY: All right.

11 BY MR. BARBER:

12 Q Ms. Wyler, that's a sister of the Weeks'?

13 A Correct.

14 Q Do you know who instigated the transfer of this
15 \$3,000 to her?

16 A I do not.

17 Q Okay.

18 MR. BARBER: I believe that's all I have, Your
19 Honor.

20 JUDGE KELLY: Thank you.

21 MR. BARBER: Oh, you know, I do have a couple more
22 questions.

23 BY MR. BARBER:

24 Q Were these records difficult to ascertain the
25 substance of? That's a horrible question. Was it difficult

1 for you to ascertain the substance of these records?

2 A The CIBC bank account records?

3 Q No, the -- well, yes.

4 A For the most part, no. It was pretty straight
5 forward.

6 Q I mean, the proceeds come in and they go out.

7 A Right.

8 Q And you knew where they went, correct?

9 A Based on the documents, yes.

10 Q From the documents. All right. Now as to Mr.
11 Robert Weeks, money went for his benefit to Ms. Baez, didn't
12 it?

13 A I -- Robert Weeks is a business partner of Maria
14 Rosa Baez.

15 Q Well, he's more than that. But he's admitted that
16 on the witness stand. And he admitted to getting some other
17 money from the account of Barbara Hesterman. Do you recall
18 that?

19 MR. CARTER: She wasn't here.

20 THE WITNESS: I wasn't here, sir.

21 MR. BARBER: Pardon?

22 MR. CARTER: She wasn't in the courtroom.

23 MR. BARBER: Oh, okay.

24 BY MR. BARBER:

1 Q Were you aware that he had gotten some money out of
2 the Barbara Hesterman account? It's in the exhibits.

3 A The First Security account, yes.

4 Q Yeah. All right. So there isn't any real question
5 of -- beyond using Ms. Baez as a conduit of Robert Weeks
6 hiding how much money he got, is there?

7 A I wouldn't know, sir.

8 MR. BARBER: All right. That's all I have.

9 BY MR. PARSONS:

10 Q Good afternoon, Ms. Achuff. My name is David
11 Parsons. I represent Kenneth Weeks and David Hesterman in
12 this matter. I'm not sure I'll be as brief as Mr. Barber.
13 In the event that I ask a question that is in any way unclear
14 to you, please ask me to rephrase it. I'll do the best I
15 can.

16 I want to try to understand your exhibits a little
17 bit better. In particular with regard to, I believe, it's
18 number 169. Do you have that in front of you?

19 A I do.

20 Q I believe you indicated on direct that the -- on
21 bates page, for example, the distribution of sales proceeds
22 out of the CIBC account for Hamilton Limited, that that's
23 simply the distribution of sales proceeds; is that right?

24 A Proceeds from the sale of Dynamic American?

1 Q Net of all transaction costs.

2 A Right. Yes.

3 Q Including bank fees?

4 A Correct. And, I'm sorry. I should clarify --
5 proceeds from the sale of Dynamic American and Koala Capital
6 Corp. since I was -- there's a \$103,580.66 component coming
7 in at some point from Koala Capital.

8 Q Did you do a separate calculation that discloses
9 the transaction costs?

10 A Transaction costs at CIBC?

11 Q No, the transaction costs -- well, let me back up.
12 Did you do a separate calculation of gross proceeds from the
13 sales of Dynamic American stock?

14 A In the brokerage records?

15 Q Yes.

16 A The brokerage records -- no, I -- they note for at
17 least some of the transactions commission fees. But no, I
18 looked at the amount that was available as cash in the
19 account, which would be the net fees -- the net proceeds,
20 pardon me.

21 Q From the monthly statements?

22 A Correct.

23 Q Now then, with respect to the discreet figures that
24 you computed with respect to Ken Weeks, Robert Weeks and
25 David Hesterman, how did you derive those gross figures? Did

1 you do it with your computer?

2 A I'm sorry. Which -- by gross figures, what are you
3 referring to?

4 Q For example, the \$1,616,000 figure for Kenneth
5 Weeks.

6 A Okay. No, actually I listed them and added them
7 up.

8 Q By hand?

9 A Yes.

10 Q An adding machine, or?

11 A No, actually I did it the old fashioned way by
12 adding them by hand. I didn't happen to have my calculator
13 handy.

14 Q So you didn't run a code in your spreadsheet?

15 A No. No.

16 Q Would it be possible to do that?

17 A I think a code would be unduly burdensome. It
18 would be possible to do a sort and segregate out the payments
19 of interest, and then do a -- put a formula in to total those
20 payments.

21 Q That's, in fact, what I meant was to figure out how
22 to sort the columns or lines --

23 A Sure.

24 Q -- in a fashion that would give us an idea of what
25 the discreet individual items are that are included for each

1 of these respondents.

2 A Yeah, and then you would total those items. Sure.

3 Q How long would it take you to do that?

4 A I don't think very long. I would sort them by
5 payee -- sort the bank records by payee, identify the
6 particular payees that I felt were -- should be included on
7 this list, and then total the amounts that went to each of
8 those payees and then do a grand total of those subtotals.

9 Q Now do you have your magnetic spreadsheets and a
10 computer available to you here today?

11 A Magnetic spreadsheet, I -- no, I have --

12 Q Magnetically stored spreadsheet.

13 A I could -- in the Commission's office I could
14 access those -- I believe that those spreadsheets would be
15 accessible from our Salt Lake office on the computer.

16 MR. PARSONS: Your Honor, would it be possible to
17 ask the witness to do that for us? Not necessarily now.

18 JUDGE KELLY: Let me hear from Mr. Carter first.

19 MR. CARTER: Your Honor, the case law is that it's
20 the burden on the tortfeasor to establish that the liability
21 is capable of apportionment. My position -- the Division's
22 position is, if these respondents want to have more
23 definitive apportionment and to present it to the Court, they
24 can do it. They have -- this is a case in which the
25 respondents have hidden proceeds offshore, fail to give an

1 accounting, one of the things that the Division asked for in
2 the OIP is an accounting. I've never received an accounting
3 from them. If the respondents wanted to do an accounting of
4 the profits and the proceeds that they received, I think that
5 it's their business to do it.

6 JUDGE KELLY: No, before we get to that point, the
7 issue is that the Division has to make a prima facia showing,
8 a colorable showing of a certain amount that ought to be
9 disgorged. Am I not correct?

10 MR. CARTER: Yes, Your Honor. And I believe that
11 we have met that burden.

12 JUDGE KELLY: Well, the question is -- I mean, I
13 brought this up at a pre-hearing conference in April and
14 asked you early on to show them your methodology for arriving
15 at the figures that you are going to be asked to disgorged.
16 Do you remember that?

17 MR. CARTER: Yes, Your Honor.

18 JUDGE KELLY: Okay. And yet the witness is here at
19 lunch time doing it by hand without a calculator.

20 MR. CARTER: Well, you know, I'm not sure that I
21 recall you telling -- directing the Division to break it down
22 specifically as to each of these witnesses, rather than on a
23 joint and several liability basis, and I did give counsel the
24 basis for our disgorgement figures long ago when the Court
25 asked me, and it was more in the terms of, you know, Exhibits

1 94, 134, and 169.

2 JUDGE KELLY: I'm looking at the April 18th order
3 that I put out after our pre-hearing conference, page two.
4 The Division should state the specific dollar amounts of
5 civil penalties and disgorgement it seeks as to each
6 respondent. It should also show how it is calculated its
7 recommended disgorgement amount. The Division should file
8 and serve a pleading containing this information no later
9 than June 26th. Should the Division provide it earlier, the
10 issues to be resolved at the hearing may be simplified and
11 stipulations might be possible.

12 You didn't do it on June 26th. I had to call and
13 ask for it in a supplemental pleading. And here we are, at
14 the hearing doing it by hand at lunch time.

15 MR. CARTER: Well, there's not much I can say about
16 that, Your Honor. I did the best that we could in terms of
17 giving the defendants exactly the numbers we were dealing
18 with in terms of breaking it down by defendant, by
19 respondent. You're correct.

20 JUDGE KELLY: All right. No, Mr. Parsons, you
21 cannot compel the Division to create exhibits that they have
22 not chosen to create. If you can show that there are flaws
23 in their arithmetic or their methodology, go to it.

24 MR. PARSONS: Well, without meaning to be
25 disrespectful, Your Honor, I was hoping to truncate cross-

1 examination considerably by not having to ask whether this
2 item is in that 1.6 million or it's not in that 1.6 million

3 JUDGE KELLY: Well, I'm surprised, actually, that I
4 just got the bottom line figures without the input into each.

5 MR. CARTER: I'm sorry, on the joint -- the
6 separate breakdown, Your Honor?

7 JUDGE KELLY: No, the way we started after lunch
8 was testimony from the witness breaking down the dollar
9 amount sought as disgorgement and as to Kenneth Weeks, we got
10 1.6 million, as to Robert Weeks, 53,000, as to David
11 Hesterman, 971,000 and so on. What he's asking is, or what
12 he's going to ask, if I understand correctly is, how did you
13 get the 971,000 as to David Hesterman. Is that right?

14 MR. PARSONS: Yeah.

15 JUDGE KELLY: It's not yet of record.

16 MR. CARTER: The specifics, right.

17 JUDGE KELLY: Off the record.

18 (Off the record at 1:59 p.m.,
19 and reconvened at 2:02 p.m.)

20 JUDGE KELLY: We're back on the record.

21 BY MR. PARSONS:

22 Q Ms. Achuff, I'm not sure what you may -- book you
23 may have most near you. I'd like you to look, thought, with
24 Exhibit 94, since it's the most extensive.

1 A I have it.

2 MR. BARBER: Your Honor, while she's doing that,
3 could I be excused for a minute. I don't have any real
4 abiding need to be here for this. Thank you.

5 MR. CARTER: Your Honor.

6 JUDGE KELLY: Is there a question pending?

7 MR. CARTER: If I may, just to short circuit this.
8 Not short circuit it, but to put the evidence into a form
9 that the Court obviously wants. And I apologize that it's
10 not in the form that you want. Maybe Ms. Achuff could do
11 this spreadsheet breakdown the way that counsel has
12 requested. I realize that this is the middle of the
13 testimony of the witness and -- but how long would that take?

14 THE WITNESS: Well, I have with me -- now it may be
15 marked up because it's a work copy. I have with me, Your
16 Honor, a sort of the spreadsheet in Exhibits 94 and 134 for
17 each of them a sort by payee, which at least, takes it out of
18 chronological order and puts it in order by the recipient of
19 the disbursements. And for some, at least, of the larger
20 ones, the recipients of multiple payments, I probably already
21 have the totals, but I could probably generate that in at
22 most, half an hour, I would think -- a total by recipient, if
23 that would be helpful to the Court.

24 JUDGE KELLY: Off the record.

1 (Off the record at 2:07 p.m.,
2 and reconvened at 2:28 p.m.)

3 JUDGE KELLY: We're back on the record. During the
4 period time we were off the record, Ms. Achuff has discussed
5 the matter with me and with counsel for both sides, and she's
6 going to prepare a new chart with the same data organized in
7 a different fashion. And she will bring that back later
8 today, and a cross-examination will proceed on that basis.
9 Is that our understanding?

10 MR. PARSONS: Yes, sir.

11 MR. CARTER: That's the Division's understanding,
12 Your Honor.

13 JUDGE KELLY: Okay, fine. Off the record again.
14 (Off the record at 2:29 p.m.,
15 and reconvened at 2:30 p.m.)

16 JUDGE KELLY: We're back on the record. Go ahead
17 and call your next witness.

18 MR. CARTER: Division calls Susan Weeks.

19 MR. PARSONS: Before we begin, Your Honor.

20 JUDGE KELLY: Let's let the witness sit.

21 MR. PARSONS: Okay.

22 JUDGE KELLY: Ms. Weeks, please have a seat.

23 THE WITNESS: Thank you.

24 JUDGE KELLY: Go ahead.

1 MR. PARSONS: Your Honor, I believe I alerted the
2 Court a day or so ago that in the event Ms. Weeks was called
3 that there would be some issues respecting the marital
4 communication privilege. Mr. Carter and I had a brief
5 discussion following my alerting the Court. Mr. Carter
6 indicated to me that Ms. Weeks -- his intention was to only
7 examine Ms. Weeks with respect to conduct --

8 MR. CARTER: No, that's not quite the right. I
9 told counsel that I believe that many of the things that
10 we'll discuss are conduct, but some are clearly
11 communications. But I certainly wouldn't call them
12 confidential communications.

13 MR. PARSONS: In any event, Mr. Carter and I
14 concluded that we probably were not going to be able to reach
15 any agreement with respect to Ms. Weeks, and we're probably
16 going to have to go question by question. I think that's
17 still the case, and I apologize for any burden that that
18 places upon the Court, but we're going to have to be
19 particularly attentive to it. Especially since, in my view,
20 there's a substantial body of case law that reflects that
21 there are non-verbal matters that constitute confidential
22 marital communications.

23 JUDGE KELLY: Thank you for the statement. That
24 doesn't require any ruling by me --

1 MR. PARSONS: No.

2 JUDGE KELLY: -- at this moment, does it?

3 MR. PARSONS: No, Your Honor.

4 JUDGE KELLY: All right. Ms. Weeks, please raise
5 your hand to be sworn.

6 Whereupon,

7 SUSAN WEEKS

8 was called as a witness and, having been first duly sworn,
9 was examined and testified as follows:

10 JUDGE KELLY: Okay. You're going to have to speak
11 way louder than that.

12 THE WITNESS: Oh, okay.

13 JUDGE KELLY: Please, put the microphone in front
14 of you. The microphones will hook you up to our recording
15 system, but to be heard by Mr. Parsons and Mr. Barber, you're
16 going to have to speak louder than that.

17 THE WITNESS: All right.

18 JUDGE KELLY: Mr. Carter -- I mean, do the
19 examination anywhere you like, but what I would like to know
20 for purposes of any objection that may come up is, date of
21 marriage, date of divorce, and things like that.

22 MR. CARTER: Right.

23 JUDGE KELLY: So if you could start with that, I'd
24 appreciate it.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
)
DYNAMIC AMERICAN CORPORATION) File No. D-2049
)

ADMINISTRATIVE PROCEEDING

PAGES: 963 through 1170

PLACE: U.S. Securities and Exchange Commission
46 West 300 South, Suite 250
Salt Lake City, Utah

DATE: Friday, July 14, 2000

The above-entitled matter came on for hearing, pursuant to notice, before JAMES T. KELLY, Administrative Law Judge, at 9:00 a.m.

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Diversified Reporting Services, Inc.
(202) 296-9626

1 JUDGE KELLY: All right. Admitted.

2 (Division's Exhibit No. 183 was
3 received into evidence.)

4 MR. CARTER: Your Honor, I'd like to continue the
5 examination of Ms. Achuff.

6 JUDGE KELLY: Okay. As I recall, when we left off
7 yesterday, Ms. Achuff was in the middle of cross-examination
8 --

9 MR. CARTER: Oh.

10 JUDGE KELLY: -- by Respondents. But I understand
11 that you have new documents. Is this all right as a way of
12 proceedings to let him admit or identify these new documents
13 and then --

14 MR. PARSONS: Yes, I would like him to do that.

15 JUDGE KELLY: Okay. Fine.

16 MR. PARSONS: It probably will aid my cross.

17 JUDGE KELLY: Fine. Fine.

18 MR. CARTER: Your Honor, the Division has had Ms.
19 Achuff prepare two additional summaries to take care of the,
20 hopefully, the Court's and Respondent's concerns about the
21 distribution of proceeds to each of the Respondents or to two
22 or three Respondents as a group, if that was the way that it
23 looked, or the way that, you know, that we thought that they
24 had to be parceled out.

1 CARLEEN ACHUFF

2 was called as a witness, and having been previously duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. CARTER:

6 Q I guess that we only did it -- we didn't do all
7 three did we, Ms. Achuff?

8 A Correct.

9 Q Okay.

10 MR. CARTER: So, Your Honor, Division Exhibit 181,
11 for identification, now.

12 BY MR. CARTER:

13 Q Would you tell the Court what that is now, Ms.
14 Achuff? How you prepared it?

15 A Yes. Exhibit 181 is a summary spreadsheet prepared
16 in Excel by me of the flow of monies into Hamilton Limited's
17 account at CIBC and then the distribution of those monies out
18 of the account.

19 Q Okay. And you put each of the -- the first page is
20 what, the payors?

21 A The first page is the payors, is the flow of the
22 money into the account. As you can see, virtually all of the
23 money comes in from the Hamilton account at Brink Hudson.
24 Again it's apportioned between funds derived from the sell of
25 Koala Capital Corporation and funds derived from the sell of

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1 Dynamic American Corporation. The source for this
2 information would be the exhibits relating to Hamilton's
3 brokerage account at Brink Hudson, which would be Exhibits
4 131, 132, and 133.

5 The second and third pages, then, are a breakdown
6 of monies coming out of Hamilton's account at CIBC. They're
7 sorted by payee. And then there is an allocation made of
8 some of the funds attributed to Ken Weeks, Ken and Bob Weeks,
9 Bob Weeks and David Hesterman. The source for this
10 information would be Exhibit 130, which are the Hamilton --
11 the underlying Hamilton account records for the Hamilton
12 account at CIBC and Exhibit 134, which is my summary
13 spreadsheet of transactions in that Hamilton account at CIBC.

14 Q All right. And in those instances where you
15 couldn't -- we didn't know right now, how to allocate, you
16 just put it in the payee total?

17 A Correct.

18 Q And did not specifically allocate it, subject to
19 being tied up later, to a specific person, if possible?

20 A Right. Now, the payee total column includes totals
21 for each of the payees. So for instance, looking down at
22 Barbara Hesterman, -- I'm looking at page two of the exhibit.

23 Q Right.

24 A You'll see a total for Barbara Hesterman of 98,800.
25 That number shows up in the payee total column, as it does

1 for every other payee. And then, that number is also
2 attributed to David Hesterman, and shows up in his column.

3 Q All right. Thank you. And then, can you similarly
4 tell the Court how Division Exhibit 182 was prepared, and
5 what we determined to drop out of these -- in the interim.

6 A Okay. Well into our discussion, --

7 Q Right.

8 A -- when I was on the stand yesterday.

9 Q Right.

10 A Okay. Exhibit 182 is a companion document to
11 Exhibit 181 dealing, in this case, with the Stockton Limited
12 account at CIBC and the various Stockton brokerage accounts,
13 as reflected in my summary, which is Exhibit, I believe, 94.

14 It is compiled in -- from the same basic data of the
15 brokerage accounts records and the CIBC documents and my
16 summary spreadsheet, and the specific source documents are
17 identified on page 13 of the exhibit. Since they are
18 voluminous, I won't bother to repeat them into the record.

19 And similarly -- and the first three pages of
20 Exhibit 182, reflect the payors, the money coming into the
21 Stockton account at CIBC. And it's apportioned in this case,
22 the total credit is then broken out -- total credits, rather,
23 are broken out to show monies attributable to the sell of
24 Landstar. And I think that's Landstar Inc. I'm not really
25 sure of the full name. The sell of Dynamic American and then

1 other sources of funds coming into the account.

2 Then starting on page four --

3 Q Let me just stop you for a minute there.

4 A Sure.

5 Q The reason that we left Landstar in -- at least in
6 the payor column; is what? Even though, it's --

7 A It has nothing to do with Dynamic American, that
8 I'm aware of. It --

9 Q It has nothing to do with the discouragement sum
10 that we're seeking either?

11 A Correct.

12 Q That bottom line?

13 A That's correct.

14 Q All right.

15 A Those monies. So in part, what I was trying to do
16 in cases where there would be a credit coming in from a
17 brokerage account that involved funds derived in part from
18 the sell of Landstar and in part from the sell of Dynamic, I
19 was trying to split those out. And I'm sure there are some
20 examples of that. Page two of the exhibit, for instance,
21 second line down, May 15th, 1996, we've got the payor being
22 shown as WXF Wexford, W-e-x-f-o-r-d, which is Prudential.
23 Stockton's account number, 881677-06, there's the payor.

24 The total amount is \$136,185.75. From looking at
25 the brokerage records, it's evident that \$3,618.48 of that is

1 attributable to Landstar, with the remainder attributable to
2 Dynamic American. So that's what you're seeing there.

3 Q All right. And then going on to the payees.

4 A Then the payees begin on page four. Again, it's
5 alphabetical by payee. The payee total column is fashioned
6 in the same way that I described for Exhibit 181. And then,
7 the allocation amongst the Respondents is also done in
8 similar fashion. As to things that we left out, in both
9 Exhibits 181 -- left out after our -- my testimony yesterday.
10 Let's see. In both Exhibits 181 and 182, I have made no
11 allocation of funds paid to American Express. Same for
12 Discover card. Same -- let's see. Those are the ones that
13 are apparent to me. I believe those are the ones that we
14 discussed yesterday.

15 Q All right. And where did we have the money to
16 attorney Drage? Was that showing on one of these?

17 A That was not coming out of either Stockton or
18 Hamilton.

19 Q All right.

20 A That was coming out of Washington National Limited.

21 Q I see. Okay. And we've removed that.

22 A Well, it's not affected by either of these two
23 spreadsheets. Now, if we get into Washington National, then
24 that's --

1 Q Yeah.

2 A -- a whole other matter.

3 Q Okay.

4 MR. CARTER: Your Honor, while I've had Ms. Achuff
5 take this -- some of these attributions out, I believe that
6 it would be in the providence of the Court to determine if
7 certain of these American Express -- or if you find evidence
8 that they would pay for the benefit of one of the
9 Respondents, I think, that it would be appropriate to charge
10 them with it for -- as discouragement. But at this point in
11 time, we don't have -- you know, without going back over the
12 testimony, for example of Susan Weeks, Ms. Achuff cannot make
13 that attribution.

14 JUDGE KELLY: I understand.

15 BY MR. CARTER:

16 Q Anything else that you want to talk about on
17 Exhibit 182, as to the payees or payors? I think, it's
18 sufficient. And then, you totaled these at the end, Ms.
19 Achuff; did you?

20 A Yeah.

21 Q All right. And I think that, we'd offer Exhibit
22 181 and 182, as Division Exhibits, to show the basis for
23 discouragement from each of the Respondents, broken out the
24 way the Court wished.

1098

1 JUDGE KELLY: All right. Thank you. Let me see if
2 I understand. On 182, the Landstar column is really not
3 relevant to discouragement; is that correct?

4 THE WITNESS: That's correct, Your Honor.

5 JUDGE KELLY: And on 181, is the Koala relevant in
6 this case?

7 THE WITNESS: No, it is not, Your Honor.

8 JUDGE KELLY: All right. Thank you.

9 MR. CARTER: It's only there, Your Honor,
10 because -- Carleen?

11 THE WITNESS: Well, it's there, again, where there
12 was a check that combined proceeds from both, I wanted to be
13 able to segregate it out. And it would leave hanging the
14 question of, where's the rest of the money. So it's purely
15 there to tie up the totals.

16 JUDGE KELLY: Thank you very much. And with that,
17 we'll resume cross-examination.

18 CROSS-EXAMINATION

19 BY MR. PARSONS:

20 Q Good afternoon once again, Ms. Achuff.

21 A Good afternoon.

22 Q I think work you've done since yesterday will be
23 very helpful in reducing my cross-examination. I think, for
24 illustrative purposes, so that I can gain some better
25 understanding of certain matters, we can work from Exhibit 94

1 and Division's Exhibit 182, relative to Stockton.

2 A I don't have that 182. Oh, I'm sorry. 182 is the
3 new one. See I was --

4 (Pause.)

5 Q Let's just start with me with the item on the first
6 page, the wire on the statement of August 30, 1995, for
7 \$102,000 to Augusta National Trust number one.

8 A Okay. So we're on Exhibit 94?

9 Q Yes.

10 A Okay.

11 Q Now, what are the underlying documents with respect
12 to that transaction?

13 A There would be -- coming out of the Stockton CIBC
14 account, there would be the wire advice. And then,
15 typically, there is also a letter of instruction to the bank.
16 I guess, in chronologic order, there would first be a letter
17 of instruction on Stockton letterhead to CIBC instructing
18 that a wire be sent identifying the receiving institution and
19 the name and account number at the receiving institution.
20 There would then be the wire advice relating to that. So
21 that's on the CIBC side. And then, of course, the statement
22 would reflect that a wire it was sent.

23 Q Yes.

24 A Then on the Augusta National Trust side, I would
25 show the wire coming in to Augusta National Trust University

1 of Utah Credit Union account.

2 Q Okay. Can you direct me, in the exhibits, to the
3 CIBC side of this transaction?

4 A Ms. Pinkston, may I have that red one there,
5 please. Thank you. I am looking at our copy of Plaintiff's
6 Exhibit 92, which are the underlying account documents for
7 the Stockton account at CIBC. And I've got copy that I'm
8 working from simply because -- for the sake of expediting
9 matters today, we've tried to tab the statements by month.

10 Q Okay.

11 A So --

12 Q So in my exhibits, --

13 A Okay.

14 Q -- it's Exhibit 92, bates stamp number 011012, is
15 the opening wire instruction?

16 A Okay. I'm sorry. Could you run that number by me
17 again. The opening wire instruction?

18 Q The opening wire instruction for this Augusta
19 \$102,000 debit. It's 011012.

20 A That is the instruction for sending the wire;
21 that's correct.

22 Q Okay. Where did you get 011012?

23 A I obtained Exhibit 92, in it's entirety, by
24 subpoena from Management and Services Company Inc., whose
25 president is Robert E. Cordes. Mr. Cordes was the one who I

1 delivered the subpoena to, and I understand the documents to
2 have been produced by him.

3 Q Did you deliver one subpoena to Mr. Cordes?

4 A One subpoena to obtain these documents, yes,
5 Exhibit 92. I've actually served three subpoenas on Mr.
6 Cordes.

7 Q Do you have the subpoena that you delivered to Mr.
8 Cordes with respect to Exhibit 92?

9 A I believe I may have a copy of it with me, if I may
10 consult some documents.

11 Q I may be able to help. Was it attached to the
12 affidavit you submitted a week and a half ago?

13 A I think, it was. Is it handwritten?

14 Q It's a handwritten subpoena dated December 14,
15 1998, with a typewritten attachment.

16 A That's the one.

17 Q And the subpoena addressee is Robert E. Cordes?

18 A Okay. I was remembering it as MASCO, but if -- you
19 have the advantage of the document in front of you. If it
20 says Robert E. Cordes, then that was the subpoena addressee.

21 Q Did you ever direct a subpoena to MASCO?

22 A No, I did not.

23 Q Did you ever address a subpoena to Stockton?

24 A No.

1 Q Would the same be true with respect to Hamilton
2 documents relative to MASCO and Hamilton itself?

3 A Yes, it would.

4 Q So you obtained all of these from Mr. Cordes?

5 A That is correct. All of these being the CIBC
6 documents for Hamilton and Stockton.

7 Q Okay. For the record, can we identify all of the
8 CIBC documents procured pursuant to the subpoena addressed to
9 Mr. Cordes? All of Exhibit 92.

10 A All of Exhibit 92. All of Exhibit 130, which would
11 be the Hamilton CIBC account. I -- if someone can provide me
12 with a list of the exhibits, I can be certain that I'm being
13 complete. Now, are you saying all -- are you asking me to
14 identify all of the exhibits on the Exhibit --

15 Q Yes.

16 A Please tell me again, what it is you want me to say
17 -- or respond to. I don't even know what you want me to say,
18 but if you'll ask your question again, so I can not confuse
19 the matter.

20 Q To cut through everything, I can try to parcel it,
21 or you can parcel it, perhaps more quickly. I want to
22 identify all the exhibits, in the Trial of Exhibits, that
23 came from Mr. Cordes.

24 A Okay. I have a list before me compiled by
25 Plaintiffs. I don't know if all of these are in evidence.

1 So I will simply go off of this list and give you numbers.
2 And you can do with them, what you will. Exhibits 84, 85,
3 86, 87, 89, 90, 91, 92. With respect to 93, I would have to
4 look at a document that I have with me in order to give you a
5 definitive answer on that one. I'm not sure. Same for 95,
6 that I would have to consult another document. Actually,
7 there are going to be a number of these that I am not able to
8 tell you just from the description on this list. If I can
9 get another document, I can give you your answer.

10 MR. CARTER: What do you need?

11 JUDGE KELLY: Off the record.

12 (Off the record at 2:40 p.m.,
13 and reconvened at 2:40 p.m.)

14 THE WITNESS: If it would be easier, -- well, let
15 me try going along, and see if we can just run it out here.
16 Okay. 93, was the first one that I was uncertain about. 93,
17 is the same as Investigative Exhibit 135. That was obtained
18 by Robert Cordes. Exhibit 95 is Investigative Exhibit 137.
19 That was also obtained from Robert Cordes. Exhibit 98 was
20 obtained from Robert Cordes. Exhibit 142 was obtained from
21 Robert Cordes.

22 Excuse me. Not 142. I beg your pardon. 101, I'm
23 getting my Investigative numbers mixed up with my Trial
24 numbers. That's the only one I goofed up. So 101 is from
25 Cordes. 102 is from Cordes. 105, 106, 108, 109, 111, 115,

1104

1 116 --

2 MR. BARBER: Pardon.

3 MR. PARSONS: 116.

4 THE WITNESS: 116.

5 MR. BARBER: 16?

6 THE WITNESS: 1-1-6, yes.

7 MR. BARBER: Yes. Thank you.

8 THE WITNESS: 118, 119, 121, 124, 125, 126, 127,
9 128, 129, 130, 131, 133, 135, 136, 138, 139, 140, 141, 142,
10 143, 144, 146, 147, and that is all. Let's see. Oh, wait a
11 second. Okay.

12 Now, starting with Exhibit 155, we have a lot of
13 exhibits that are identified by their bates numbers rather
14 than their Investigative Exhibit number. That's going to
15 take a little bit longer. I can certainly do it, but it may
16 not be quite as fast going through one by one. If I could
17 take a moment and just --

18 BY MR. PARSONS:

19 Q We need to do it. I can do it question by
20 question, or --

21 A Well, I mean, it's --

22 Q -- ask you to continue.

23 A -- just a matter of what's most expeditious. Let's
24 see, hang on here. Okay. Exhibit 155 is from Cordes.
25 Exhibit 156, 157, 160, 164, that would be it.

1 Q Now, Ms. Achuff, allow me to ask you to get the
2 notebook with Division Exhibits 102 and 103. Now, you
3 testified that Exhibit 102, Stockton accounts statements at
4 Investors Associates, were obtained from Mr. Cordes. But you
5 did not testify that 103 and 104, which I take to be
6 additional account statements, were not obtained from Mr.
7 Cordes.

8 A Sort of a double negative there. Yes. 102 -- we
9 got account statements relating to this Investors Associates
10 account both from Robert Cordes and also directly from
11 Prudential Securities the clearing firm for Investors
12 Associates. So -- okay. So 103 and 104 would be documents
13 that I obtained from Prudential -- or -- yes, Prudential.

14 Q Okay. Now, in general, would you say that that is
15 true with respect to other instances in the exhibit list
16 where you've identified one brokerage account that's
17 coming -- a set of statements that's coming from Cordes, and
18 not said the same thing about other statements from the same
19 firm?

20 A Exactly.

21 Q Do you know whether you have identical material
22 from the two sources?

23 A In many cases, I have identical material. In many
24 cases, when you subpoena a brokerage firm, -- when the
25 Commission subpoenas a brokerage firm, for say, account

1 statements, the statement that they give us appears to come
2 straight out of the computer. And it's not gussied up, if
3 you will. So it's covering the same period of time. It
4 doesn't look as nice as the one that goes to the client.

5 So -- and I think that's probably reflected in a few of
6 these where there may be a difference in the appearance of
7 the statement. But in many cases, we got statements both
8 from Robert Cordes and statements from the brokerage firm.
9 Similarly, in many cases, I would have copies of debit and
10 credit items that I would have obtained both from the
11 brokerage firm and from Robert Cordes.

12 Q Did you discover the brokerage firms from the
13 documents that Mr. Cordes provided you?

14 A No. I discovered the brokerage firms from the
15 transfer agent records.

16 Q Transfer agent records?

17 A Correct.

18 Q Ms. Achuff, let me ask you now, to turn to Division
19 Exhibit No. 182. Do you have it?

20 A Yes, I do.

21 Q Let me call your attention to page ten and 11 of
22 that document, where you have tabulated a total -- and the
23 entries from Michelle Martin, in particular.

24 A I have it.

1 Q What is the basis upon which you have attributed
2 each and everyone of these amounts to Kenneth Weeks?

3 A I understand Michelle Martin to be the wife of Ken
4 Weeks.

5 Q Would it make a difference to learn, in connection
6 with this tabulation, that they got married on October 9th,
7 1999?

8 A With respect to the payments to Michelle Martin, in
9 the name of Michelle Martin, where wired to five bank
10 accounts. One of which was an account at Citibank.
11 According to the account records of that account, Ken Weeks
12 is a signatory on that account, along with Michelle Martin.
13 That would be an additional reason to put those monies in the
14 column for him.

15 Q So if we took Exhibit 94 and took the Citibank
16 portions of the amounts to Michelle Martin, there we have a
17 joint account nexus?

18 A Correct.

19 Q And we can determine what that amount is?

20 A Correct. With respect to the others, the account
21 records for all five of the Michelle Martin accounts,
22 including the Citibank account, show an address in New York
23 City, which is also given as the address, I believe, -- and
24 actually, if I can check a document so I don't mis-speak.
25 I'd like to look at a record. Is there a record in this

1 evidence of the shareholders' names addresses from I Data,
2 Inc.?

3 Q I don't believe a shareholders list was tendered.

4 MR. CARTER: I don't know whether it's part of --
5 it may well be part of those 61 to 65 documents, the Exhibit
6 61 to 65. I don't have one directly.

7 THE WITNESS: Okay. I have a document with me. It
8 would be in my case in a manilla folder with my initials,
9 CHA. And if you want to just give me that folder, I can get
10 it out.

11 JUDGE KELLY: Off the record.

12 (Off the record at 2:57 p.m.,
13 and reconvened at 2:58 p.m.)

14 THE WITNESS: I'm looking at a record that I've
15 annotated of a printout from -- that I obtained from I Data,
16 Inc. under the subpoena that I sent to them, that's a list of
17 shareholders for Dynamic American. And actually, on this --
18 the address that I was thinking of -- the address shown for
19 Michelle Martin on all of the account records, at the five
20 banks, is the same as the address shown for Fernando Cordero,
21 care of David Hesterman at the address which is 26 West 75th
22 Street, Apartment 3A, in New York. The zip is 10023. I had
23 remembered that as being Ken Weeks.

24 I took testimony from a broker in -- at Investor
25 Associates who was the registered representative for the

Diversified Reporting Services, Inc.
(202) 296-9626

1 Stockton accounts at Investors Associates. He told me that
2 it was his understanding from conversations with Ken Weeks,
3 that Michelle Martin was Ken Weeks' girlfriend. This would
4 have been probably in '96, '97.

5 Q And that's the basis upon which you --

6 A So I would say that the total of all of the things
7 that I just cited would be the basis. And I am -- I have a
8 recollection that address is 26 West 75th Street, Apartment
9 3A, was an address that was given to us late in the
10 Commission's PanWorld civil investigation when we were
11 attempting to serve a subpoena on Ken Weeks, or serve notice
12 on him of our intent to file an injunctive action. And that
13 that was the address that was given to us as being his
14 current address.

15 Q Did anyone to tell you to attribute all of the
16 funds paid to Michelle Martin to Mr. Weeks?

17 A I think, I made that decision jointly with Mr.
18 Carter.

19 Q Long ago, right?

20 A Yeah. I would say so. And --

21 Q Did you ever make any effort to ascertain what Ms.
22 Martin may have done with any of the money?

23 A Certainly, I obtained account records for all of
24 those accounts. I subpoenaed all five of those banks.

1 Q What did you find?

2 A The lion share of the money -- the vast majority of
3 those funds was taken out of the accounts as cash.

4 Q So you have no idea of the ultimate disposition of
5 the money?

6 A No. It's virtually impossible to trace cash.

7 Q Let me ask you to step -- or turn backwards to page
8 nine in Exhibit 182.

9 A Yes.

10 Q And you see about, not quite half way down the
11 page, the entry for \$30,000 check to Canyon Corporation?

12 A Right.

13 Q Isn't it true that all the information that you
14 have about Canyon Corporation also comes from Mr. Cordes?

15 A No. That is not true.

16 Q It's not?

17 A Correct.

18 Q Isn't it true that the information you have about
19 this payment to Canyon Corporation is from Mr. Cordes?

20 A The \$30,000 payment?

21 Q Yes.

22 A Yes. That's from the CIBC account records. Yes.

23 (Pause.)

24 Q Ms. Achuff, when is the last time you had any
25 occasion to try and have communications with Robert Cordes?

////

1 A Me, as an individual?

2 Q Yes.

3 A At the conclusion of my examination of him in
4 Dallas, in late January of 1999, I served him with two
5 additional subpoenas. I had served him with the one that you
6 referenced earlier, the one dated December 14th. At the
7 conclusion of his testimony, I served him with subpoenas for
8 records of Washington National Limited, which he had
9 identified in his testimony as a corporation that he set up
10 at the request of Ken Weeks.

11 And Brokerage -- let me get the name right here.
12 Brokerage Industries Limited, which is another corporation
13 that Mr. Cordes set up. And so I served him with subpoenas
14 for those, for documents relating to those two entities. And
15 so there would have been some follow-up actually with Mr.
16 Cordes' attorney, Bobby Majumder, relating to him sending me
17 those documents. And I may have had some communication with
18 Mr. Majumder relating to that. To the best of my knowledge,
19 I think that would have been the last time. And I think I
20 got those documents in February of '99. So a little over a
21 year ago, a year and --

22 Q So if I understand things correctly, you would say
23 the approximate hour of 9:38 a.m. Central Standard Time, on
24 January 28th, 1999, was the last time you had any contact
25 with Mr. Cordes?

1112

1 A No. Let's see. Yeah. I think that's correct. I
2 was going to say there was some -- we had set up a border
3 watch in order to be alerted by customs when Mr. Cordes came
4 into the country. And there was some confusion about that
5 being lifted. But I think all of that communication was
6 prior to his testimony on the -- whatever it was, the 26th
7 and 27th. So I believe, yes. That that was the last direct
8 contact I had with him.

9 Q Now, who was with you when you conducted the
10 examination of Mr. Cordes on January 27th and 28th, 1999?

11 MR. CARTER: I'm going to object, Your Honor, to
12 the relevance of all of this. I think that if Counsel wants
13 to get into inquiring about his claim to grand jury issue,
14 that we're in the wrong forum to try that case or to hear
15 that case.

16 JUDGE KELLY: No. I'll allow the testimony.

17 THE WITNESS: Okay. I took Mr. Cordes' testimony
18 all day on the 27th, -- have I got my dates right?

19 BY MR. PARSONS:

20 Q It's 27th and 28th, --

21 A All day on the 27th --

22 Q -- according to the face of the testimonies.

23 A Okay. And then, for roughly an hour on the morning
24 of the 28th, I was accompanied by Leslie Hendrickson-Hughes,
25 who is both a Commission employee and also a special U. S.

1113

1 attorney, I guess is the designation.

2 Q During the examination that you conducted on
3 January 27th, did Ms. Hendrickson actively participate?

4 A She did not.

5 Q Did she ask any questions?

6 A The only statement that I have seen in perusing the
7 transcript of that testimony that she made was, at one point,
8 she asked if we could go off the record. And I'm sorry. She
9 said that, and at the very beginning of the testimony, she
10 said a few words to Mr. Cordes relating, I think principally,
11 to her dual status. Other than that, no, she did not
12 participate.

13 Q Did she take notes?

14 A I would presume so.

15 Q Did she pass you any notes to suggest any questions
16 that you might ask?

17 A I don't have a recollection of that.

18 Q Did you have dialogue with her that was not
19 recorded during the course of the testimony, while you were
20 still on the record?

21 A It is conceivable. I do recall, in fact, a
22 dialogue -- we were going through the -- Mr. Cordes and I
23 were going through the CIBC account records, which as you
24 have seen are voluminous. And it was cumbersome to be
25 referring to pages to try and talk about transactions. I had

111 4

1 already prepared as an aid to my examination of him -- I had
2 already prepared Exhibits 94 and 134.

3 And I had them with me to use an aid in examining
4 him. And I think it was Leslie's suggestion that we mark
5 those summaries as exhibits. And Mr. Cordes' testimony, in
6 order to facilitate talking about these transactions. I
7 believe that that suggestion came from her.

8 Other than that, I -- and maybe some housekeep --
9 I'm sure we exchanged words. I would imagine that it was
10 housekeeping stuff relating to where's the such and what
11 exhibit. And that sort of thing. But other than talking
12 about my summary statements, I have no recollection of any
13 specific conversations.

14 Q Is the same true for conversations that were had
15 with you and -- between you and Ms. Hendrickson while the
16 proceedings were off the record?

17 A Again, I have no specific recollection of any
18 conversation that she and I had. We went out to dinner in a
19 public place and talked about things other than work.

20 Q Prior to the time that you commenced Mr. Cordes'
21 testimony on January 27th, did you prepare to educe his
22 testimony?

23 A Yes, I did.

24 Q Did you prepare with Ms. Hendrickson?

1115

1 A No, I did not.

2 Q At the conclusion of your portion of conducting Mr.
3 Cordes' testimony, what happened, to your knowledge?

4 A The record reflects, I think, that we went off the
5 record at 9:38. I would have packed up whatever documents I
6 was taking with me. I think I left the bulk of them there,
7 because I was under the impression that Ms. Hendrickson was
8 going to conduct her own examination of Mr. Cordes. And I
9 left and went to the airport.

10 Q Why was that?

11 A Because I had finished my examination.

12 Q Why didn't you stay for the portion with Ms.
13 Hendrickson?

14 A Because my understanding was that if Ms.
15 Hendrickson had a subsequent interview with Mr. Cordes, it
16 was going to be, if you will, wearing her hat as a special U.
17 S. attorney -- I'm sorry. I don't know exactly what her
18 title is, and I had no part of that. And so there was no
19 reason for me to stay. Furthermore, I was under the
20 impression it would have been inappropriate for me to stay.

21 Q Were you under the impression, or understanding,
22 that there was a considerable risk of violation of Federal
23 Rule of Criminal Procedures 6E in the event that you might
24 stay?

1116

1 A I cannot say that I had an awareness of any
2 specific rule. I'm sorry, sir. I'm not a lawyer, but I knew
3 that I had finished my examination, as a part of the
4 Commission's civil investigation. And that anything that was
5 going on with -- I was aware of the existence of something
6 called a 6E order from other things I've been involved with
7 at the Commission. And I knew I was not on a 6E order.
8 There was no reason for me to stay. And it was not something
9 that would have been appropriate.

10 MR. PARSONS: I don't think I have anything else.

11 JUDGE KELLY: Thank you.

12 BY MR. BARBER:

13 Q Just a couple of things, Ms. Achuff. In addition
14 to the substance of Exhibits 181 and 182, which appear to
15 detail, that is on 181, total payments to Robert Weeks of
16 \$50,900. That's on page three. An additional 3,294.54,
17 which you attributed to Bob and Ken Weeks.

18 A I'm sorry, Mr. Barber. I've misplaced an exhibit.

19 Q Okay. I'm sorry. And I was summarizing the
20 information on page three.

21 A Of which --

22 Q You concluded that 50,900 was paid to Bob Weeks
23 through the Maria Rosa Baez account. And that also
24 attributable to Bob and Ken was an additional 3,294.54,
25 correct?

1117

1 A Correct.

2 Q And if we go to the substance of Exhibit 182, we
3 have a \$10,000 payment attributed to -- total of two 5,000
4 payments, attributed to Bob and Ken, respecting the Draper
5 Rehab and Care Center. And then another 3,000 --

6 A I'm sorry. Can you give me a page number just so I
7 can be following along here?

8 Q That's not -- page nine.

9 A Thank you. Right.

10 Q And then on page ten, you attribute another \$3,000
11 to the two of them because their sister bought it, correct?

12 A Right.

13 Q All right. That looks like 13 plus 50,900 plus
14 3,294.54 -- that's the sum of those attributions, correct?

15 A Plus 3,000 -- I'm not sure if you said that, 3,000
16 from Exhibit 182, which I think is --

17 Q But I lumped the ten and the 13 -- and the three
18 together to 13.

19 A Well, no. I don't think that's appropriate. Let's
20 see.

21 Q Well, let me ask a direct question, then. If you
22 add those up what do you get?

23 JUDGE KELLY: You've still got the 3,000 for the
24 Empanadas.

1 THE WITNESS: Well, exactly.

2 BY MR. BARBER:

3 Q And I was looking for that.

4 A Okay.

5 Q So you've got another 3,000 --

6 A Yeah.

7 Q -- from the Empanadas?

8 JUDGE KELLY: Page ten.

9 THE WITNESS: The totals for the Respondents stand
10 alone. The Ken and Bob Weeks column is a separate -- or
11 separate items from those in the Ken Weeks column and the Bob
12 Weeks column.

13 BY MR. BARBER:

14 Q Yeah.

15 A Okay. So yes, if you total 13,000 from Ken and Bob
16 Weeks on Exhibit 182, 3,000 from -- for Bob Weeks on 182,
17 \$3,294.54 for Ken and Bob on Exhibit 181, and 50,900 for Bob
18 on Exhibit 181, then whatever that total is, is the total for
19 those two exhibits, for those monies, as sort of, if you
20 will, first order recipients.

21 Q I was hoping by Excel or otherwise, you may have
22 the total.

23 A No. But I have a calculator here. And I'd be
24 happy to give you that. So the total of those four is
25 70,194.54.

1119

1 Q And a portion of that, if one were to apportion it
2 out, --

3 A Some portion --

4 Q -- would be jointly attributable to Bob and Ken,
5 perhaps divided in two?

6 A Whatever would be the apportionment, correct.

7 Q Okay. During the course of your examination, have
8 you actually traced any other proceeds of any type or sort to
9 Robert Weeks?

10 A I have.

11 Q What are they?

12 A As reflected in Exhibits 181 and 182. Let's look
13 at 181 first. On page two, you see that \$98,800 was wired in
14 the name of Barbara Hesterman. That money went into two
15 accounts at First Security Bank of Utah.

16 Q Okay.

17 A A portion of the money from that account went to
18 Robert Weeks in form of checks out of that account.

19 Q I recall, I think a check for \$6,300 -- well,
20 strike that. There's an exhibit that has appended to it, I
21 think, two checks out of the Hesterman account to Robert
22 Weeks. Does that sound familiar to you? And I think it
23 might be Exhibit 159.

24 A No. Not from the description.

1 Q There's a schedule of the Hesterman account in
2 evidence; is there not?

3 MR. CARTER: I don't believe so, Mr. Barber.

4 THE WITNESS: I don't believe so.

5 MR. CARTER: Exhibit 163 is Barbara Hesterman and
6 David Hesterman's joint bank account. Is that what you're
7 thinking about?

8 MR. BARBER: I think so. Is that it?

9 JUDGE KELLY: Off the record.

10 (Off the record at 3:21 p.m.,
11 and reconvened at 3:22 p.m.)

12 MR. BARBER: Six or seven pages into that exhibit,
13 maybe more, there's a bates stamp 13480 to Robert Weeks for
14 \$6,300, I believe.

15 JUDGE KELLY: We're talking about Division Exhibit
16 163?

17 MR. BARBER: Correct.

18 THE WITNESS: Okay. I've got it. Bates -- check
19 bates stamped 13480, drawn on this -- her security account,
20 January 16th, '96, made out to Robert Weeks in the amount of
21 \$6,300 even.

22 BY MR. BARBER:

23 Q Right. And if you'll look through there, will you
24 see if there are any other checks to Robert Weeks?

1121

1 MR. CARTER: Just Robert Weeks?

2 MR. BARBER: To Robert Weeks. I didn't see any,
3 but --

4 THE WITNESS: I don't --

5 MR. CARTER: Yeah. There's --

6 THE WITNESS: Well, give me a moment.

7 MR. BARBER: I don't have one in my exhibit.

8 MR. CARTER: There's one more to Robert Weeks, and
9 there's some to Insurance Trust. This is 13430.

10 MR. BARBER: Okay. Look at 1430 --

11 MR. CARTER: 13430.

12 MR. BARBER: 13430, is that it?

13 MR. CARTER: 13430.

14 MR. BARBER: I don't know why that isn't in my --
15 oh, there they are. Yeah.

16 BY MR. BARBER:

17 Q There's another check to Robert --

18 A Right.

19 Q -- for 6,000?

20 A I see that.

21 Q Okay. Now, let's find the Insurance Trust ones.

22 There's -- I can't -- there -- it's 13438. Can you see how
23 much that is? I can't read it.

24 A I'm not entirely sure. I have a document with me
25 that would allow me to --

1 Q Well, let's --

2 A -- tell you.

3 Q Yeah.

4 MR. BARBER: May she have leave to step down and do
5 that, Your Honor?

6 JUDGE KELLY: Off the record.

7 (Off the record at 3:24 p.m.,
8 and reconvened at 3:25 p.m.)

9 BY MR. BARBER:

10 Q You have another document in front of you, which I
11 believe will tell us how much additional money Mr. Weeks got
12 out of the Barbara Hesterman account; is that correct?

13 A That is correct. I -- may I put Exhibit --

14 Q Sure. I think we're done with that.

15 A Put this out of the way.

16 Q And I think where we left off, we were trying to
17 figure out how much that check, which appears to be 4,900,
18 was. And we've already talked about the 6,300, correct?

19 A Right. Let me just give you the whole thing
20 together, so it's clear, and I'm not confused.

21 Q Okay. I just don't want to double dip.

22 A Exactly.

23 Q If we disregard everything else that's been said
24 about the Hesterman account, will you tell me how much money,
25 total, he got out of that account?

1 A Yes, I will.

2 Q That'll be great.

3 A Okay. I prepared a spreadsheet for the Hesterman
4 account at First Security in the same manner that I did for
5 the Stockton and Hamilton accounts. And then, in the way
6 that we've looked at with those accounts, I sorted that by
7 payee.

8 Q Great.

9 A Okay. So -- let me see if I've -- okay. There are
10 checks made out to either Bob Weeks or Robert Weeks or Robert
11 G. Weeks totaling \$36,800 coming out of the Hesterman
12 account. There are checks to Insurance Trust totaling
13 68,800. Checks to Maria Rosa Baez totaling 3,500. And that
14 gives us a grand total of \$109,100 coming out of the
15 Hesterman account at First Security Bank.

16 Q Okay. And that's in addition to the other totals
17 that we expressed out of Stockton and Hamilton, correct?

18 A For Bob Weeks, that's correct.

19 Q Yes. All right. So the total is in the
20 neighborhood of \$170,000, 65 or 70?

21 A The total is \$179,294.54, including the, whatever
22 it was, 5,000 or so that's attributed to both Ken and Bob
23 Weeks.

24 Q Okay. Anything else that you can attribute to him,
25 so far as you know?

1124

1 A If I may look at another document?

2 Q Go ahead.

3 JUDGE KELLY: Off the record.

4 (Off the record at 3:28 p.m.,
5 and reconvened at 3:28 p.m.)

6 THE WITNESS: I also did a spreadsheet for the
7 Washington National Limited bank account at CIBC. And those
8 records show -- pardon me, an additional 8,500 going to
9 Insurance Trust out of Washington National, and that would be
10 all.

11 BY MR. BARBER:

12 Q Okay. So now, adding it all together, do we have a
13 grand total?

14 A We have a grand total of \$187,794.54, including the
15 small amount for the Ken and Bob Weeks column, for which I
16 can find actual checks or wires in the name of Bob Weeks or
17 entities or persons associated with him.

18 Q And of that total, some 13 or 14,000, that is the
19 10,000 to the Draper Rehab and 37 or 900 to Larkin, is
20 attributable jointly to Ken and Bob, correct?

21 A Correct.

22 Q Respecting the Cordes matter, just a couple
23 additional questions. Did Cordes come to Dallas and agree to
24 be deposed pursuant to your subpoena? That is the one that
25 you caused to be served on him in, was it Miami?

1 A Fort Lauderdale.

2 Q Fort Lauderdale?

3 A That's -- yes.

4 Q All right. Did Ms. Hendrickson also serve a
5 subpoena from the United States District Court on Cordes at
6 the same time in Fort Lauderdale, or at any other time, to
7 your knowledge?

8 A Well, Ms. Hendrickson was not with me in Fort
9 Lauderdale.

10 Q Well, --

11 A And I'm not aware of any subpoena that she ever
12 served on Cordes.

13 Q You were not present when any Grand Jury or other
14 subpoena from the U. S. District Court was served on Cordes,
15 at the same time, correct?

16 A I am not aware of the existence of Grand Jury
17 subpoena --

18 Q All right.

19 A -- related to Mr. Cordes.

20 Q All right. For all you -- the only one you know
21 about it is the one you caused to be served on him?

22 A You got it.

23 Q All right. Now, you made an arrangement,
24 apparently, through Mr. Majumder wherein you arranged an
25 appointment to go to Dallas and depose Mr. Cordes in

1 Majumder's office; is that correct?

2 A Right. I took his testimony in his attorney's
3 office.

4 Q Did you tell Ms. Hendrickson that you were going to
5 do that?

6 A Yes.

7 Q Do you know whether anybody else informed her about
8 that?

9 A I do not.

10 Q But you called her and told her, I've got Cordes
11 coming to Dallas, and I'm going to interview him? In sum?

12 A In sum, yes.

13 Q All right. Did you invite her to go to Dallas and
14 also interview Cordes as an assistant United -- as a special
15 assistant United States attorney, at the occasion where he
16 had agreed to appear pursuant to your subpoena?

17 A I'm not sure of the exact manner in which the
18 arrangements came about. It was known to all of the parties
19 involved from the point where Mr. Majumder contacted me and
20 said that his client Mr. Cordes had gotten a subpoena to
21 appear, and we, at that point, started dealing with Mr.
22 Majumder, of course, rather than the witness. It was, I
23 think, talked about with all of us that it was going to be a
24 -- that we would like to do -- or the -- that's the we of the
25 general we, would like to do a two part interview. That I

1 wanted to interview Mr. Cordes.

2 Q Ms. Achuff, the Court has, a number of times in
3 this hearing, expressed concern over answers in the passive
4 voice. It was talked about. If you're going to discuss what
5 was talked about, as a witness, it's your obligation to tell
6 us who said what.

7 A Of course.

8 Q And I'd appreciate it if you would account your
9 testimony in those terms.

10 A Certainly. Thank you for pointing out my error. I
11 would say that I, -- for the Commission, I, Leslie
12 Hendrickson-Hughes, Don Hurl, who is the associate regional
13 director of our office, possibly, Dan Shay, who is the
14 regional director.

15 Q Yes.

16 A Robert Entertalio, who is the associate regional
17 director. I would say that the five of us were involved in
18 discussions about how to proceed with respect to taking
19 testimony from Robert Cordes.

20 Q All right. And I can very easily understand that.
21 But I'm directing my questions now, to -- and I'm not really
22 sure -- care how the decision was made, but how it is that
23 Ms. Hendrickson-Hughes was invited to attend and also examine
24 Cordes.

1128

1 First of all, was she invited by somebody from the
2 staff to be there and examine?

3 A I -- your use of the word invited -- I'm sorry. Is
4 not one that I can really respond to. As I say, there was --

5 Q Okay. You tell me how she came to be there.

6 A Okay. As I said, the five of us discussed the
7 matter. Obviously, Mr. Cordes is, -- as I knew already from
8 the Commission's civil investigation of PanWorld Minerals
9 International, Inc., that's where I became aware of Robert
10 Cordes, was in the course of that civil investigation. That
11 civil investigation -- or pardon me. The civil proceeding in
12 that matter was stayed, but it's still out there in limbo
13 somewhere.

14 And so from the Commission's standpoint, Mr. Cordes
15 could provide valuable testimony and documents relating to
16 both PanWorld and Dynamic American. Leslie and I are both
17 officers of the Commission for purposes of the PanWorld --
18 Commission's PanWorld formal order.

19 We are also, along with pretty much everybody in
20 the Enforcement side of the office, officers for purposes for
21 the Dynamic American Commission investigation. So it was
22 only -- plus I was aware of the existence of -- that the
23 Grand Jury was looking at PanWorld, because I had testified
24 to the Grand Jury.

1129

1 Q There wasn't a Grand Jury investigation. There was
2 an indictment pending. Wasn't there, at that time?

3 A Well, sir, I testified to a Grand Jury. I don't
4 remember the specific timing of events. There is certainly
5 criminal interest in PanWorld.

6 Q All right.

7 A And so it was, -- of course, how many opportunities
8 would you have to speak with Robert Cordes for all of
9 these --

10 Q Looks like one.

11 A That's the way it's going.

12 Q Yeah.

13 A Well, two actually, mine and Leslie's.

14 Q All right.

15 A So naturally, you want to maximize your
16 opportunities.

17 Q Well of course, I'm not -- nobody misunderstands
18 that.

19 A Well, --

20 Q The question is whether it's proper to do so. And
21 my concern is, that in the Leslie Hendrickson interview of
22 Robert Cordes, she introduces herself as special assistant
23 United States Attorney, Hendrickson.

24 A I'll take your word for that, sir. I wasn't there.

1130

1 Q You don't know that. Well, I'll tell you that
2 that's the case.

3 A Well, actually, I do know because in the pleadings
4 that -- or I have seen a representation of the case because
5 of a recent motion that included a page in the transcript.

6 Q That's what she did, right?

7 A That's what the page shows, yes.

8 Q And she was there in that role during the pendency
9 of at least a Grand Jury investigation of my client and
10 others, in connection with PanWorld, correct?

11 A Right.

12 Q My question is whether there was discussion amongst
13 the five members of the staff, that you've alluded to, about
14 a rule known as the Collateral Proceeding Rule, which
15 expresses at least concern about the use of SEC investigative
16 subpoenas to procure information for use in criminal
17 proceedings. Was that discussed in any way, shape, or form?

18 A I do not have a recollection of that. But I will
19 tell you that when it starts getting hot and heavy on the
20 legal stuff, I tend to phase out. And that would not have
21 been an issue that I would have been involved in. I'm not a
22 lawyer, and so any discussions about the legal aspects of
23 this, I really am not the person to ask about that, sir.

24 Q May have been with the Office of General Counsel or
25 somebody else?

1 A Certainly.

2 Q Okay.

3 MR. BARBER: That's all I have, Your Honor.

4 JUDGE KELLY: Thank you.

5 MR. CARTER: Your Honor, I'd offer at this time
6 Exhibits 94, 134, 158, 159, 161, 169, 181, and 182, which are
7 summary exhibits pending.

8 MR. BARBER: They're Ms. Achuff's summary exhibits.

9 MR. CARTER: Right. I ordered the underlying bank
10 record.

11 THE WITNESS: Well --

12 MR. CARTER: Well, we don't need 94. I'm sorry.
13 Do we?

14 MR. BARBER: Would you give me those numbers again,
15 Tom?

16 MR. CARTER: Sure. 94, that's a spreadsheet for
17 Stockton's account at the CIBC.

18 MR. BARBER: Okay.

19 MR. CARTER: 134, that's a spreadsheet for
20 Hamilton's account at the CIBC. 158 is the Ken
21 Weeks/Michelle Martin's Citibank account underlying some of
22 these. 159, wire transfers CIBC to Ken Weeks' Insurance
23 Service. 161, Michelle Martin Fleet Bank account. 169,
24 which is the first spreadsheet that Ms. Achuff did that we
25 talked about, that we now brought back and revised.

1132

1 MR. BARBER: Yeah.

2 MR. CARTER: But it still shows the Court the flow.
3 And then, 181 and 182, which are the two spreadsheets that
4 were revised at Counsel's and the Court's suggestion.

5 JUDGE KELLY: Respondents?

6 MR. BARBER: Your Honor, I object only to Exhibit
7 94 and Exhibit 134. And I do so on the grounds that, so far,
8 there is no foundation in the record for the CIBC bank
9 records, which these exhibits purport to summarize.

10 We had nobody from CIBC appear to tell us what they
11 are, and they were apparently produced by Mr. Cordes. And we
12 don't even have, in evidence, anything he said about it.

13 JUDGE KELLY: Thank you.

14 MR. PARSONS: Your Honor, I have the same objection
15 with respect to 94 and 134, I believe it is. And I also
16 cannot agree to any of the Michelle Martin bank records,
17 which have not been authenticated either. I believe that's
18 all he's offering at the moment. If I've missed something
19 considerably, I object to anything that has not been
20 authenticated properly by a party -- by a person who is able
21 to authenticate them.

22 JUDGE KELLY: Mr. Carter.

23 MR. CARTER: Your Honor, I could illicit
24 information from Ms. Achuff at this time. She's qualified to
25 tell the Court how bank records are kept. All of these are

1 bank records on their face, their business records for
2 various banks. I believe that Ms. Achuff would be a
3 qualified witness under the Rule.

4 MR. BARBER: Except that wouldn't address the
5 difficulty. Because it wouldn't provide foundation for the
6 introduction of those documents. How they're kept as a
7 general matter isn't the issue. The issue is whether these
8 are accurate, properly maintained records of the accounts of
9 Stockton and Limited -- and Hamilton. And it takes the bank
10 to tell us that, I believe.

11 MR. CARTER: I don't think that the Respondents
12 have made any showing of irregularity or any showing that
13 they are not, as represented, not authentic and not accurate.
14 Other than the bald assertion.

15 JUDGE KELLY: Admitted.

16 (Division's Exhibit Nos. 94,
17 134, 158, 159, 161, 169, 181,
18 182 were received into
19 evidence.)

20 JUDGE KELLY: Are we through with this witness?

21 MR. CARTER: Yes, Your Honor.

22 JUDGE KELLY: Ms. Achuff, I want to thank you very
23 much for all the extra time you spent yesterday and today
24 preparing these additional summaries. I find them helpful.
25 And I appreciate the work that you put into do that.

1 THE WITNESS: Thank you, Your Honor.

2 JUDGE KELLY: Shall we take a break?

3 MR. CARTER: Yes.

4 MR. BARBER: Please.

5 JUDGE KELLY: All right. Ten minutes.

6 (Off the record at 3:44 p.m.,
7 and reconvened at 3:54 p.m.)

8 JUDGE KELLY: With respect to Ms. Achuff's
9 exhibits, there was one page yesterday that she made some
10 handwritten changes on, page five of six. What I have asked
11 the Division of Enforcement to do, is to physically remove
12 the wrong page from the exhibit that will go to the Office of
13 the Secretary, and put in the page with the handwritten
14 corrections. So --

15 MR. BARBER: That's fine, as long as they provide
16 us a copy.

17 JUDGE KELLY: I believe that they were handed out
18 yesterday.

19 MR. PARSONS: They did.

20 MR. BARBER: Oh. Yeah. We did get the changes.

21 JUDGE KELLY: Go ahead, Mr. Carter.

22 MR. CARTER: Well, Your Honor, I'd like to call
23 David Hesterman next.

24 MR. PARSONS: Mr. Hesterman is not here. I can go
25 call and see if I can get him here in a few minutes.

EXHIBIT
10

BEFORE THE
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In re Barlow, et al.

Respondents.

ADMINISTRATIVE
PROCEEDING
File No. 3-9952

AFFIDAVIT OF BARBARA HESTERMAN

COUNTY OF S
STATE OF UTAH S

Barbara Hesterman, being duly sworn, deposes and states as follows.

1. I am over the age of eighteen years and fully competent to testify to the facts and matters set forth herein which are true and correct based upon my personal knowledge. I am the mother of David Hesterman, one of the respondents in this case.

2. I have received a subpoena to testify on behalf of the staff of the United States Securities and Exchange Commission (SEC) at a hearing scheduled to begin on July 10, 2000, in Salt Lake City, Utah. To my knowledge I have never given a statement of any kind to any member of the staff of the SEC.

3. In late 1999, however, I testified before a federal Grand Jury sitting in Salt Lake City, Utah, for approximately thirty minutes.

I declare or affirm under the penalties that the foregoing is true and correct.

Barbara Hesterman
Barbara Hesterman

June 28, 2000